Elections Canada

INVESTIGATORS' MANUAL

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Commissioner of Canada Elections

January 2004

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FOREWORD

It is indeed with great pleasure and considerable pride that I sign the foreword of this publication of the ***Investigators' Manual*** prepared by the Office of the Commissioner of Canada Elections.

The Commissioner of Canada Elections, appointed under the *Canada Elections Act* by the Chief Electoral Officer, has the statutory duty to ensure that the provisions of the *Canada Elections Act* and *Referendum Act* are complied with and enforced. In the fulfillment of these responsibilities, the Commissioner retains the services of persons with expertise and experience in the field of conducting investigations. Before the 1993 General Federal Election, the Commissioner relied mainly on the Royal Canadian Mounted Police (RCMP) for investigation of alleged offences. Since then, most of the investigations have been carried out by investigators recruited and trained by the Office of the Commissioner.

This manual sets out the principal guidelines by which the Commissioner's investigators must exercise their duties and responsibilities while carrying out investigations under the *Canada Elections Act* or the *Referendum Act*.

The publication of this manual renders public the rules under which investigations are performed in the context of an electoral event. It will also serve to bring fairness and consistency in the conduct of investigative proceedings and, therefore, participate in the promotion of the integrity of the Canadian electoral process.

I wish to thank the Commissioner of Canada Elections and those who have participated in the preparation and publication of this manual. I trust that it will prove very informative and useful to those interested in electoral matters.

Jean-Pierre Kingsley
Chief Electoral Officer of Canada

PREFACE

This ***Investigators' Manual*** consolidates the investigation policies and procedures designed by the Office of the Commissioner of Canada Elections; it is primarily designed to guide Investigators in the discharge of their duties in the course of an investigation under the *Canada Elections Act* and the *Referendum Act*.

The publication of this manual has two objectives. First, to clarify the duties and responsibilities of Investigators and the rules by which they must perform an investigation in the context of an electoral event. Second, to disclose to the general public the guidelines by which Investigators are asked to exercise their responsibilities.

The role of Investigators is not set out in the *Canada Elections Act* or *Referendum Act*. They undertake investigations in an electoral context on behalf of and under the direction and control of the Commissioner of Canada Elections, whose statutory responsibilities are to ensure that the *Canada Elections Act* and the *Referendum Act* are complied with and enforced. Prior to the 1993 general federal election, investigatory duties were carried out by the Royal Canadian Mounted Police. Since then, almost all electoral investigations have been conducted by investigators retained under contract. Although these investigators are knowledgeable and competent and have expertise and experience in the field of investigation, it was felt important to issue these guidelines to stress that the duties of Investigators must be performed with discretion, political impartiality, integrity, in good faith and in accordance with the highest ethical standards.

This manual also discloses to the public how electoral investigations are carried out. It is important that the role of the Commissioner of Canada Elections and that of Investigators be clear and bear the scrutiny of all those interested in electoral matters. This openness and transparency should help to maintain and promote the confidence and trust of all Canadians in the integrity of the electoral process.

Important amendments to the *Canada Elections Act* brought by Bill C-24 which comes into force on January 1, 2004 and dealing with changes to the election finance regime have been incorporated into this manual.

With the necessary adaptations and various changes, several policies contained in this manual find their source in governmental documentations. We wish to thank all those who have participated in the development of this document; in particular Johanne Massicotte, Senior Counsel to the Commissioner, Marc Chénier, Legal Counsel, Jean-Claude Bernais, Chief Investigator, and Manon Potvin, Financial and Administrative Officer, of the Office of the Commissioner of Canada Elections.

Our aim is to update and perfect this document in the years to come. Readers are therefore encouraged to forward to the Commissioner their comments and suggestions for additions or corrections to this ***Investigators' Manual***.

Raymond A. Landry
Commissioner of Canada Elections

Ottawa, January 2004

Elections Canada

CHAPTER 1

THE STATUTORY FRAMEWORK

Commissioner of Canada Elections

January 2004

THE STATUTORY FRAMEWORK

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1. INTRODUCTION

Elections Canada is an independent, non-partisan agency of Parliament serving the Canadian electorate, legislators, political parties and candidates. Elections Canada also offers technical assistance and advice to other countries on electoral matters.

This chapter reviews the nomination and organisation of the Office of the Chief Electoral Officer and summarizes how the Chief Electoral Officer (CEO) carries out his statutory responsibilities and administrative tasks for the preparation and running of electoral events. It also reviews the history of the position of the Commissioner of Canada Elections (Commissioner), the duties and responsibilities of the Commissioner, the structure of the Office of the Commissioner and the relationship between the Commissioner, the CEO and other directorates of Elections Canada.

2. CHIEF ELECTORAL OFFICER

2.1 Background

The position of Chief Electoral Officer was created in 1920 by the *Dominion Elections Act*,[1] largely to put an end to political partisanship in the administration of federal elections.

The CEO is appointed by a resolution of the House of Commons, so that all parties represented in the House may contribute to the selection process. Once appointed, the incumbent reports directly to Parliament and communicates with the Governor in Council through a member of the Queen's Privy Council.

The CEO serves until the age of 65 and can be removed for cause by the Governor General on address of the Senate and House of Commons.[2]

There have been five CEOs since the creation of the position; Jean-Pierre Kingsley, the current CEO, was appointed in 1990.[3]

2.2 Mandate

The mandate of the CEO, as an independent officer of Parliament, is to conduct federal general elections, by-elections and federal referendums; to keep the National Register of Electors up to date; to carry out voter education and information programs; to provide the Boundaries Commissions with a variety of administrative and technical support services with respect to the *Electoral Boundaries Readjustment Act*.

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[1] *Dominion Elections Act*, S.C. 1920, c. 46.

[2] See section 13 of the *Canada Elections Act*.

[3] The previous incumbents were Jean-Marc Hamel (1966-1990), Nelson J. Castonguay (1949-1966), Jules Castonguay (1927-1949) and Oliver Mowat Biggar (1920-1927).

2.3 Structure of the Office of the CEO

Elections Canada consists of a core group of staff at the Ottawa headquarters. However, when an electoral event is held, the agency requires the services of more than 110,000 people across the country.

The CEO is assisted by a Deputy Chief Electoral Officer and Chief Legal Counsel.[4]

To ensure that the provisions of the *Acts*[5] are complied with and enforced, the CEO appoints a Commissioner of Canada Elections.[6] The CEO also appoints and oversees the work of a Broadcasting Arbitrator[7] who allocates paid and free broadcasting time for registered political parties during a general election, or for referendum committees during a referendum, according to a formula set out in the *Canada Elections Act*.

The CEO also oversees Elections Canada's eight directorates[8] that carry out the administrative tasks involved in preparing and conducting electoral events. The eight directorates are:

- Legal Services
- Election Financing and Corporate Services
- Operations
- Information Technology
- Communications
- Corporate Planning and Executive Services
- Register and Geography
- National and International Research and Policy Development

In addition, Elections Canada oversees international electoral matters to meet Canada's commitment of providing professional and technical assistance in support of democratic development in countries around the world.

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[4] Although the Act provides for an Assistant Chief Electoral Officer (ACEO), who is appointed by the Governor in Council [see subsection 19(1) of the *Canada Elections Act*], the Governor in Council has not appointed anyone since the post became vacant in 2001.

[5] For the purpose of this manual, "*Acts*" include the *Canada Elections Act* and the *Referendum Act*.

[6] See section 509 of the *Canada Elections Act*.

[7] See section 332 of the *Canada Elections Act*.

[8] Refer to Appendix 1, *Organization Chart of the Office of the Chief Electoral Officer*, at the end of this chapter.

3. COMMISSIONER OF CANADA ELECTIONS

3.1 Creation of the position of Commissioner of Canada Elections

Prior to the enactment of the *Election Expenses Act*[9] in 1974, there was no federal authority responsible for enforcing all the provisions of the *Acts*. Before 1974, the CEO was responsible for investigating and prosecuting alleged offences committed by Election Officers[10] and certain violations committed by anyone either directly or indirectly related to election procedures concerning the taking of the vote. Anyone alleging violations of other provisions of the *Acts*, such as election expenses, matters involving dishonesty or having an impact on election results, had no recourse other than that of a private prosecution.

This lack of a comprehensive enforcement mechanism set the stage for the creation of the position of Commissioner in 1974.

Generally, it had been assumed over the years that the CEO maintained an impartial position and therefore did not become involved in matters other than those directly related to the administrative conduct of elections.

To ensure the impartiality of the CEO, an amendment of the *Election Expenses Act*, adopted in 1974, established the position of *"Commissioner of Election Expenses"*. It made the incumbent responsible, under the general supervision of the CEO, for ensuring that the election expenses provisions of the *Act* were complied with and enforced.

In December 1977, Parliament adopted a further amendment to the *Canada Elections Act* that extended the role of the Commissioner to cover all of the *Act*. With those amendments, the position title was changed to *"Commissioner of Canada Elections"*.

Four individuals have held this position since it was created in 1974; Raymond A. Landry, the current Commissioner, was appointed on April 13, 1992.[11]

3.2 Relationship between the Commissioner, the CEO and other directorates

The CEO is responsible for the administration of elections, by-elections and referendums, under the *Canada Elections Act* and other laws that govern the federal electoral process. The mandate includes other important aspects of our democratic electoral system such as the:

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[9] *Election Expenses Act*, C.S. 1973-74, c. 51.

[10] See subsection 22(1) of the *Canada Elections Act* for the list and description of "Election Officers". Also refer to Chapter 22 – *Relations with election officers*, for more information on this matter.

[11] The previous incumbents were George M. Allen (1988-1991), Joseph Gorman (1976-1987) and John P. Dewis (1974-1976) as *"Commissioner of election expenses"*.

- implementation of electoral legislation
- registration of political parties and of their electoral district associations
- establishment and maintenance of the National Register of Electors
- monitoring election spending by candidates, third parties, political parties and nomination and leadership contestants, examination and disclosure of their financial returns, and reimbursement, where applicable, of their expenses according to formulas laid down in the *Act*
- ensuring access to the system for all eligible citizens, through both physical facilities and public education and information programs
- assisting in the process of periodic readjustment of electoral district boundaries by independent commissions to ensure that representation is in accordance with the law.

The Commissioner, in concert with the CEO, the Deputy Chief Electoral Officer and Chief Legal Counsel, the Director of Operations and the Senior Director, Election Financing and Corporate Services, provides assistance and direction to those engaged in the electoral process and to the public to promote compliance with the provisions of the *Acts*.

The Commissioner reports the activities of his Office to the CEO through regular oral briefings and written reports, including statistical data. During an electoral event, reports are provided weekly and more often where necessary.

The Office of the CEO conveys the activities of the Commissioner to the House of Commons Standing Committee on Procedure and House Affairs (the Standing Committee). A general overview of the type of cases and prosecutions handled by the Commissioner and of the human and financial resources expended by his Office are reported to the Standing Committee.

During an election campaign, the CEO and the Commissioner will collaborate to ensure the integrity of the electoral process and the fairness of the election. This collaboration may include, among other things, focusing on cases that may affect the overall conduct of the election.

3.3 Statutory powers of the Commissioner

The Commissioner is responsible for ensuring that the *Acts* are complied with and enforced.[12]

Independence is vital to the Commissioner's role. The Commissioner must be free to act without influence from political parties or the government. Political independence is essential to maintain and promote the exercise of fundamental democratic rights in the electoral process.[13]

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[12] Supra, footnote 6.

[13] Refer to Chapter 2 – *Qualifications, duties and responsibilities of Investigators*, for the specific reference related to the avoidance of political activities by Investigators.

Except for offences[14] for which an election officer has already taken measures, such as those relating to peace and good order, personation, an attempt to vote twice or when not qualified to vote, all offences under the *Acts* can be prosecuted only with the written consent of the Commissioner. In this regard, the Commissioner exercises powers similar to those of the Attorney General of Canada.

The decision[15] to investigate or to proceed by way of enforcement or compliance under the *Acts* rests solely with the Commissioner and may not be delegated or imposed. Any action, administrative or policy statements, taking away the right to exercise this discretion would not be binding on the Commissioner. The Commissioner can only exercise this administrative discretion in furtherance of the objectives of the legislation; this discretion is therefore not absolute; it must serve the purposes of the law and implies good faith in the exercise of these duties.

If the Chief Electoral Officer believes on reasonable grounds that an election officer may have committed an offence or that any person may have committed an offence listed in section 510 of the *Canada Elections Act*, the CEO shall direct the Commissioner to make the inquiry that appears to the Commissioner to be appropriate in the circumstances.

3.4 Objective

The objective of the Commissioner is to assist in maintaining the confidence of the public in the fairness of the electoral process by seeking compliance with the *Act* and the resolution of contraventions through remedial rather than punitive measures, where appropriate, and by enforcing the *Act* through injunctions or the authorization of prosecutions when that is in the public interest.

3.5 Enforcing the Act

The Commissioner has several options available to ensure that the *Act* is complied with and enforced.

— The Commissioner may determine that it is in the public interest to enter into a formal compliance agreement[16] with a "contracting party"[17] if the Commissioner believes on reasonable grounds that the "contracting party" has committed, is about to commit or is likely to commit an act or omission that could constitute an offence under the *Act*. The compliance agreement is based on the voluntary agreement of the "contracting party" to comply with the requirements of the *Act*, and is published.

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[14] See subsections 479(3) and 512(2) of the *Canada Elections Act*.

[15] Refer to Chapter 18 – *Consent of the Commissioner to prosecute*, for more information on this matter.

[16] See section 517 of the *Canada Elections Act*.

[17] Supra, footnote 16.

- The Commissioner can seek an injunction[18] from a competent court[19] during the electoral period[20] ordering someone to do something required by the *Act* or to refrain from doing something contrary to the *Act* if fairness of the electoral process is affected and the public interest requires action to be taken.
- The Commissioner can consent to prosecution[21] when satisfied that the evidence demonstrates it is in the public interest to pursue prosecution.

3.6 Structure of the Office of the Commissioner

In addition to the Commissioner, the Office of the Commissioner consists of the following positions:

- Senior Counsel to the Commissioner and legal staff, assisted during an electoral event by additional lawyers as required;
- Chief Investigator, assisted during an electoral event by Assistant Chief Investigators as required;
- Investigators, a number of which are located across Canada; and
- Financial and Administrative Officer and support staff, assisted during an electoral event by additional personnel as required.

3.6.1 Senior Counsel to the Commissioner

Senior Counsel to the Commissioner is responsible for managing the office and providing legal advice related to the Commissioner's enforcement and compliance responsibilities; developing and implementing systems required for administering the compliance and enforcement functions of the Commissioner; reviewing all alleged offences brought to the Commissioner's attention; making recommendations for action; and overseeing the investigative process[22] and prosecutions.[23]

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[18] See subsection 516(1) of the *Canada Elections Act.*

[19] See subsection 525(1) of the *Canada Elections Act.*

[20] See paragraph 57(1)*c*) of the *Canada Elections Act.*

[21] See section 511 of the *Canada Elections Act.*

[22] Refer to Chapter 5 – *Direction and control of investigation*, for more information on the role of the Counsel to the Commissioner in this activity.

[23] Refer to Chapter 17 – *The decision to prosecute*, and Chapter 18 – *Consent of the Commissioner to prosecute*, for more information on the responsibilities of the Counsel to the Commissioner.

3.6.2 Chief Investigator

Under the immediate supervision of Senior Counsel to the Commissioner, the Chief Investigator organises, executes, coordinates and monitors the national compliance and enforcement program of the Commissioner.

This includes:

- managing investigative resources;
- conducting preliminary assessments[24] and investigations[25] as may be required or as directed by Senior Counsel to the Commissioner;
- directing and monitoring on an on-call basis the work of Assistant Chief Investigators and Investigators;
- reviewing reports and evidence;[26]
- providing timely briefings to Senior Counsel to the Commissioner and the Commissioner on the status of preliminary assessments, investigations or matters requiring their attention; and,
- preparing assessments of investigation findings with respect to offences under the *Acts*.

The Chief Investigator also assists in the development and delivery of training programs for Investigators.

3.6.3 Investigators

Investigators are appointed on a contractual basis. They are experienced investigators. Under the immediate supervision of the Chief Investigator, they carry out, at the request of the Commissioner, inquiries and investigations with respect to compliance and enforcement of the *Acts* and report all matters pertaining to investigations. They also assist the prosecuting agent, Senior Counsel to the Commissioner or the Commissioner in the preparation of cases.

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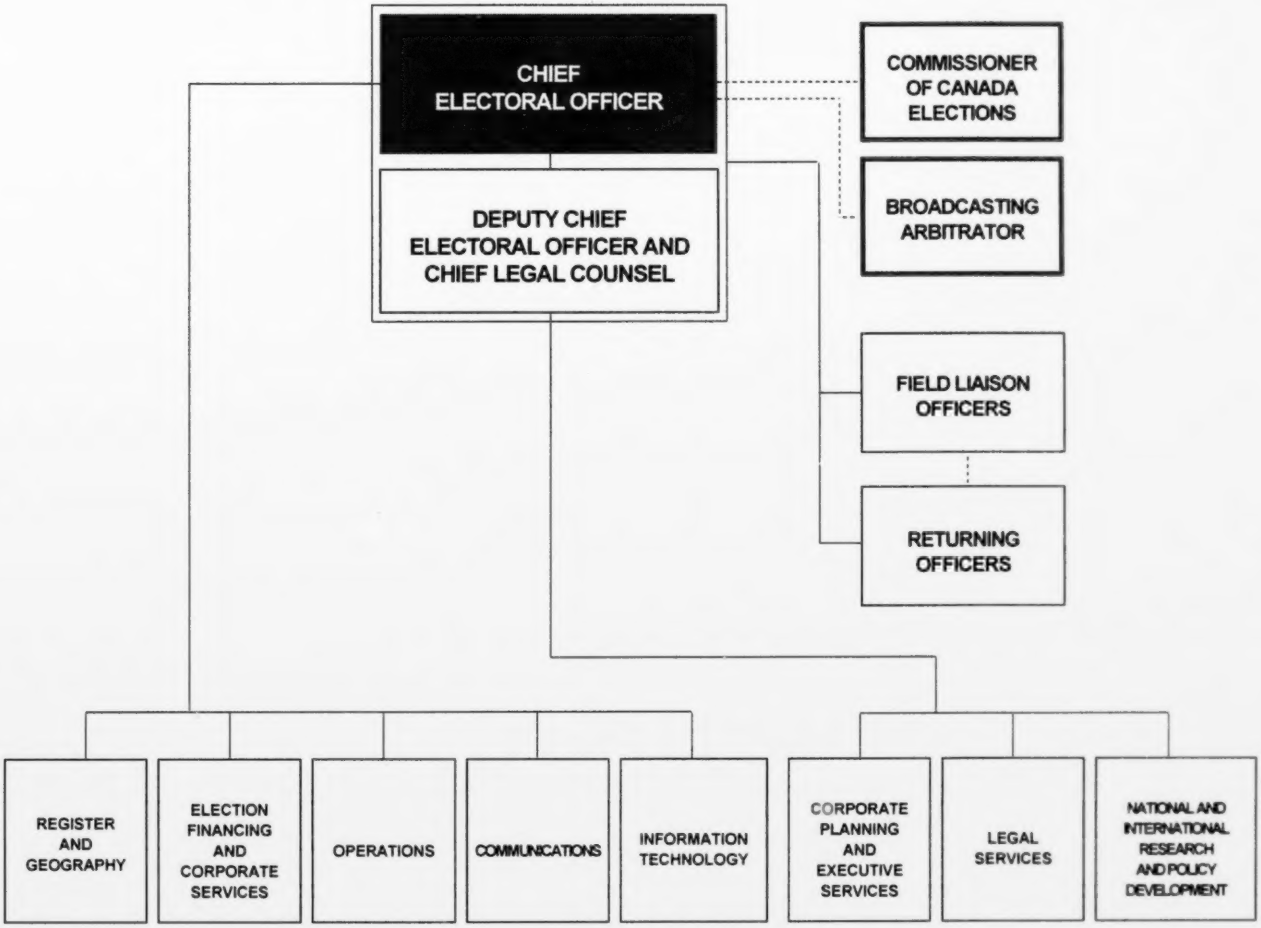
[24] Refer to Chapter 3 – *Preliminary assessment of alleged infractions*, for more information on this activity and the role of the Counsel to the Commissioner in this matter.

[25] Refer to Chapter 5 – *Direction and control of investigation*, for more information on the specific avenues, which may be considered.

[26] Refer to Chapter 12 – *Investigation report format*, and Chapter 14 – *Assessment of investigation findings*, for more information on reporting requirements and monitoring.

Appendix 1

Office of the Chief Electoral Officer


CHIEF ELECTORAL OFFICER
COMMISSIONER OF CANADA ELECTIONS
BROADCASTING ARBITRATOR
DEPUTY CHIEF ELECTORAL OFFICER AND CHIEF LEGAL COUNSEL
FIELD LIAISON OFFICERS
RETURNING OFFICERS
REGISTER AND GEOGRAPHY
ELECTION FINANCING AND CORPORATE SERVICES
OPERATIONS
COMMUNICATIONS
INFORMATION TECHNOLOGY
CORPORATE PLANNING AND EXECUTIVE SERVICES
LEGAL SERVICES
NATIONAL AND INTERNATIONAL RESEARCH AND POLICY DEVELOPMENT

Elections Canada

CHAPTER 2

QUALIFICATIONS, DUTIES AND RESPONSIBILITIES OF INVESTIGATORS

Commissioner of Canada Elections

January 2004

Chapter 2

QUALIFICATIONS, DUTIES AND RESPONSIBILITIES OF INVESTIGATORS

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1. INTRODUCTION

This chapter describes the duties, qualifications and responsibilities of Investigators assisting the Commissioner of Canada Elections (the Commissioner) to carry out the responsibilities bestowed on the Commissioner.

Prior to the 1993 federal election, the Royal Canadian Mounted Police (RCMP) conducted most of the investigations on behalf of the Commissioner. The general conduct, control and management of investigations referred to the RCMP were left to the assigned police investigator and his supervisor. Since then, these responsibilities have been assumed by the Chief Investigator,[1] under the general supervision of Senior Counsel to the Commissioner and the Commissioner.

2. STATUTORY AUTHORITY

The powers of Investigators devolve from the duties, responsibilities and powers of the Commissioner under the *Acts*.[2] Investigators are appointed under a contractual agreement. They are issued a numbered identification card signed by them, bearing their photograph and certified by the Commissioner. They are not deemed to be persons employed in the Public Service for the purposes of the *Public Service Superannuation Act*.

The role and powers[3] of the Chief Investigator, Assistant Chief Investigators and Investigators are different from those of a "peace officer".[4] Unlike peace officers, who have the right and duty to initiate an investigation when reasonable grounds exist to believe that an offence was committed, Investigators cannot proceed unless the investigation has been approved by the Commissioner, or Senior Counsel to the Commissioner[5] on an urgent basis in the absence of the Commissioner. They do not have the powers of arrest or detention, nor do they carry any weapons. Investigators may search premises, seize or order the production of documents under a proper court order,[6] only when directed to do so by the Commissioner or the Senior Counsel to the Commissioner. Under an amendment to the *Canada Elections Act*[7], any person charged by the Commissioner with duties relating to the administration or enforcement of the Act is deemed to be a public officer for the purposes of section 487 of the *Criminal Code*, with respect to information for a search warrant.

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[1] Refer to Chapter 5 – *Direction and control of investigation*, for more information on this matter.

[2] For the purpose of this manual, "*Acts*" include the *Canada Elections Act* and the *Referendum Act*.

[3] They exercise the powers of a "person in authority". A "person in authority" is anyone who can affect the proceedings against an accused. Investigators investigating an alleged offence under the *Act* shall be considered a person in authority because the prosecution must demonstrate that the information or evidence given to a person in authority was given voluntarily.

[4] See section 2 of the *Criminal Code* for the interpretation and the definition of "peace officer".

[5] Refer to Chapter 4 – *Investigation policy*, for more information on circumstances when the Counsel to the Commissioner may approve an investigation.

[6] Refer to Chapter 8, Appendix 5, for more information on search warrants and seizures under warrants.

[7] Subsection 511(2) of the *Canada Elections Act*, as amended by section 62 of Bill C-24, in force as of January 1, 2004.

3. *HIRING PROCEDURES*

Elections Canada is an equal opportunity employer. Candidates for a position of Investigator undergo a preliminary identification and assessment. The process involves consultation with retired and serving senior managers in large Canadian law enforcement and security agencies. Consideration is given to candidates who closely match the professional qualifications described below and who are free of any commitment that would make them unavailable to pursue any matter on behalf of the Commissioner. A number of candidates are interviewed and rated according to their qualifications. The Commissioner makes the final selection.

4. PROFESSIONAL QUALIFICATIONS

Candidates for a position of Investigator require formal training in a police academy or the equivalent credits from a recognised institution of learning. They must have served in a Canadian police force or security agency and enjoy a reputation of high professional and personal integrity. Candidates need a strong background in the areas of investigation of breaches of Canadian laws,[8] more specifically in the gathering of evidence and court procedures. Consideration is given to individuals who have had investigative experience in other fields, depending on the demonstrated degree of experience and ability. They must be able to qualify for a Canadian government security clearance at the secret level and, where applicable, meet the bilingual requirements and accept to undergo training provided by the Office of the Commissioner.

Successful candidates must be familiar with and maintain a thorough understanding of their areas of responsibilities including the policies and procedures contained in this manual. They must also be conscious of the importance of the electoral process and of the constant need for discretion. Candidates for the positions of Chief Investigator and Assistant Chief Investigator must also have managerial skills in the planning, co-ordination and control of investigation.

5. INDEPENDENCE FROM POLITICAL PARTIES

The Commissioner is independent from political control and must not engage in any political activity. This is a fundamental principle underlying our system of law enforcement under the *Acts*. Similarly, Investigators are expected to be, and be perceived to be, impartial; therefore, they should not be or have been actively or publicly engaged in the support or opposition of the election of any federal or provincial political party or candidate for elective office, nor any federal or provincial referendum committee.[9]

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[8] In particular, the *Criminal Code*, the *Canada Evidence Act*, the *Access to Information Act* and the *Privacy Act*.

6. DUTIES AND RESPONSIBILITIES

Investigators have the following specific authority and responsibilities when requested to act on behalf of the Commissioner under the direction of the Chief Investigator. While exercising these responsibilities, Investigators have a duty to act fairly and protect the individual's[10] rights. In the course of an investigation, Investigators will:

a) collect and report physical, documentary and photographic evidence and information obtained through lawful means and relevant to the investigation of alleged offences under the *Acts*;

b) interview individuals, whether or not they are suspects,[11] from whom relevant information and evidence may be obtained;

c) collect and report personal information, as defined in section 3 of the *Privacy Act*, where it relates directly to matters under investigation, ensuring they advise the individual about the purpose for which the information is being collected;[12]

d) inspect election documents,[13] when authorised by the Commissioner,[14] in relation to any inquiry for an offence under the *Acts*;

e) collect and report information volunteered by the individual concerning an alleged offence under any statute, but not expressly punishable under the *Acts*.[15] In these cases, Investigators must handle the situation in a manner, which will not jeopardise any possible future investigation by the appropriate investigative agency. Investigators must explain to the individual that they are not empowered to investigate these offences;

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[9] In the *Contract agreement*, Investigators declare not being presently engaged in politically partisan activities either at the federal or at the provincial level. They agree for the duration of the contract not to work for or on behalf of any federal political party, candidate for federal elective office, nor any person, body, agency or institution with partisan political purposes or objectives, nor any federal or provincial referendum committee. They also cannot actively or publicly support or oppose the election of any federal political party or candidate for neither federal elective office, nor actively or publicly support or oppose any option in a federal or provincial referendum.

[10] Refer to Chapter 7 – *Official cautions*, for more information on the essential requirements to follow to ensure the protection of rights of individuals.

[11] See Chapter 7 – *Official cautions*, for the definition of "suspect".

[12] See sections 3 to 6 of the *Privacy Act*, R.S. 1985, c. P-21, for definition of "personal information". For example, information relating to financial transactions in which the individual has been involved, address, age, marital status, race or ethnic origin, criminal or employment history. A photocopy of sections 3, 4, 5 and 6 of the *Privacy Act* is enclosed at the end of this chapter as Appendix 1.

[13] See section 2 of the *Canada Elections Act* for the definition of "election documents".

[14] See subsection 540(4) of the *Canada Elections Act*.

[15] For example, *Criminal Code* offences relating to an election matter such as sections 22, 119, 366, 368, 377, 464.

f) report promptly to the Chief Investigator any information not directly related to an approved investigation but which may impact on the complaint review process or the Election Enforcement Program;

g) report all facts required for the preparation of an information and, on instructions from the Office of the Commissioner, lay an information[16] using Form 1 to obtain a search warrant, pursuant to section 487 of the *Criminal Code*;

h) lay an information when the Commissioner has provided consent to initiate a prosecution;[17]

i) perform their duties to the highest calibre prevailing in the field of investigation;

j) perform their duties so as not to interfere or not to be seen as interfering with the electoral process;

k) complete their contractual obligations to the satisfaction of the Commissioner.

7. CONFLICT OF INTEREST

The Office of the Commissioner must maintain public confidence and trust by upholding high ethical standards, objectivity and impartiality. Investigators may act as consultants for other clients when not required to provide priority to the requirements of the Commissioner. It is therefore important that their personal and professional activities be conducted in a manner that will bear public scrutiny. In addition to not being involved in any politically partisan activities, as described in Section 5 above, Investigators shall not work for clients whose activities may be interpreted as being a real, potential or apparent conflict of interest with the duties and responsibilities of the Commissioner (e.g. not work for political parties, members of Parliament, candidates, their agents or local associations).

It will be incumbent upon Investigators to inform the Office of the Commissioner of the identity of their clients and of any situations that may conflict with any assignment from that Office. No assignment of investigations will be made where, in the judgement of the Commissioner, there is a real, potential or apparent conflict of interest on the part of an Investigator with respect to such assignment.

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[16] See Appendix 4, Chapter 8, for a sample copy of *Form 1*.

[17] Chapter 17 – *The decision to prosecute*, deals with this matter.

8. PROTECTION OF INVESTIGATORS ACTING UNDER AUTHORITY

Where Investigators are required or authorised by law to execute an action in the administration and enforcement of the *Acts*, each, if acting on reasonable grounds, may claim the justification and protection of subsection 25(1) of the *Criminal Code*[18].

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[18] 25(1) Protection of persons acting under authority – Every one who is required or authorized by law to do anything in the administration or enforcement of the law

(a) as a private person,
(b) as a peace officer or public officer,
(c) in aid of a peace officer or public officer, or
(d) by virtue of his office,

is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose.

Appendix 1

Sections 3, 4, 5 and 6, *Privacy Act*, Personal information

INTERPRETATION

Definitions

3. In this *Act*,

"administrative purpose" «fins administratives»

"administrative purpose", in relation to the use of personal information about an individual, means the use of that information in a decision making process that directly affects that individual;

"alternative format" « support de substitution »

"alternative format", with respect to personal information, means a format that allows a person with a sensory disability to read or listen to the personal information;

"Court" «Cour»

"Court" means the Federal Court—Trial Division;

"designated Minister" «ministre désigné»

"designated Minister", in relation to any provision of this *Act*, means such member of the Queen's Privy Council for Canada as is designated by the Governor in Council as the Minister for the purposes of that provision;

"government institution" «institution fédérale»

"government institution" means any department or ministry of state of the Government of Canada listed in the schedule or any body or office listed in the schedule;

"head" «responsable d'institution fédérale»

"head", in respect of a government institution, means

(a) in the case of a department or ministry of state, the member of the Queen's Privy Council for Canada presiding over that institution, or

(b) in any other case, the person designated by order in council pursuant to this paragraph and for the purposes of this *Act* to be the head of that institution;

"personal information" «renseignements personnels»

"personal information" means information about an identifiable individual that is recorded in any form including, without restricting the generality of the foregoing,

(a) information relating to the race, national or ethnic origin, colour, religion, age or marital status of the individual,

(b) information relating to the education or the medical, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,

(c) any identifying number, symbol or other particular assigned to the individual,

(d) the address, fingerprints or blood type of the individual,

(e) the personal opinions or views of the individual except where they are about another individual or about a proposal for a grant, an award or a prize to be made to another individual by a government institution or a part of a government institution specified in the regulations,

(f) correspondence sent to a government institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to such correspondence that would reveal the contents of the original correspondence,

(g) the views or opinions of another individual about the individual,

(h) the views or opinions of another individual about a proposal for a grant, an award or a prize to be made to the individual by an institution or a part of an institution referred to in paragraph (e), but excluding the name of the other individual where it appears with the views or opinions of the other individual, and

(i) the name of the individual where it appears with other personal information relating to the individual or where the disclosure of the name itself would reveal information about the individual,

but, for the purposes of sections 7, 8 and 26 and section 19 of the *Access to Information Act*, does not include:

(j) information about an individual who is or was an officer or employee of a government institution that relates to the position or functions of the individual including,

(*i*) the fact that the individual is or was an officer or employee of the government institution,

(*ii*) the title, business address and telephone number of the individual,

(*iii*) the classification, salary range and responsibilities of the position held by the individual,

(*iv*) the name of the individual on a document prepared by the individual in the course of employment, and

(*v*) the personal opinions or views of the individual given in the course of employment,

(k) information about an individual who is or was performing services under contract for a government institution that relates to the services performed, including the terms of the contract, the name of the individual and the opinions or views of the individual given in the course of the performance of those services,

(l) information relating to any discretionary benefit of a financial nature, including the granting of a licence or permit, conferred on an individual, including the name of the individual and the exact nature of the benefit, and

(m) information about an individual who has been dead for more than twenty years;

"personal information bank" «fichier de renseignements personnels»

"personal information bank" means a collection or grouping of personal information described in section 10;

"Privacy Commissioner" «Commissaire à la protection de la vie privée»

"Privacy Commissioner" means the Commissioner appointed under section 53;

"sensory disability" « déficience sensorielle »

"sensory disability" means a disability that relates to sight or hearing.

R.S., 1985, c. P-21, s. 3; 1992, c. 1, s. 144(F), c. 21, s. 34.

COLLECTION, RETENTION AND DISPOSAL OF PERSONAL INFORMATION

Collection of personal information

4. No personal information shall be collected by a government institution unless it relates directly to an operating program or activity of the institution.

1980-81-82-83, c. 111, Sch. II "4".

Personal information to be collected directly

5. (1) A government institution shall, wherever possible, collect personal information that is intended to be used for an administrative purpose directly from the individual to whom it relates except where the individual authorizes otherwise or where personal information may be disclosed to the institution under subsection 8(2).

Individual to be informed of purpose

(2) A government institution shall inform any individual from whom the institution collects personal information of the purpose for which the information is being collected.

Exception

(3) Subsections (1) and (2) do not apply where compliance therewith might

(a) result in the collection of inaccurate information; or

(b) defeat the purpose or prejudice the use for which information is collected.

1980-81-82-83, c. 111, Sch. II "5".

Retention of personal information used for an administrative purpose

6. (1) Personal information that has been used by a government institution for an administrative purpose shall be retained by the institution for such period of time after it is so used as may be prescribed by regulation in order to ensure that the individual to whom it relates has a reasonable opportunity to obtain access to the information.

Accuracy of personal information

(2) A government institution shall take all reasonable steps to ensure that personal information that is used for an administrative purpose by the institution is as accurate, up-to-date and complete as possible.

Disposal of personal information

(3) A government institution shall dispose of personal information under the control of the institution in accordance with the regulations and in accordance with any directives or guidelines issued by the designated minister in relation to the disposal of that information.

1980-81-82-83, c. 111, Sch. II "6".

Elections Canada

CHAPTER 3

PRELIMINARY ASSESSMENT OF ALLEGED INFRACTIONS

Commissioner of Canada Elections

January 2004

PRELIMINARY ASSESSMENT OF ALLEGED INFRACTIONS

Table of Contents

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1. INTRODUCTION

This chapter provides general information, direction and guidance to Senior Counsel to the Commissioner and the Chief Investigator in the preparation of preliminary assessments of alleged infractions[1] of the *Acts*.[2]

2. RESPONSIBILITIES

It is the responsibility of Legal Counsel to the Commissioner and the Chief Investigator, when directed by Senior Counsel, to complete a preliminary assessment of all complaints received by the Commissioner of Canada Elections (the Commissioner) in a timely and thorough manner and to make such recommendations[3] as may be necessary with respect to such complaints.

Where, during the course of an investigation, new allegations come to the attention of Investigators, they should, after weighing the value of the new information, seek direction from the Commissioner's Office before investigating the new allegations.

All oral complaints, anonymous or not, received in the Commissioner's Office are recorded on the Report Form.[4] A preliminary assessment will be made for the consideration and the direction of the Commissioner.

The Chief Investigator is responsible for monitoring, on a regular basis, the complaint database and for reviewing and analysing the nature, frequency and extent of various oral and anonymous complaints. The Chief Investigator is also responsible for producing timely comprehensive reports to Senior Counsel to the Commissioner and the Commissioner on any significant trends relating to oral complaints and recommending appropriate course of action which the Commissioner may wish to undertake.

The Commissioner is responsible for the decision to approve the recommended course of action or taking any other action, which may be more appropriate under the circumstances.

3. PURPOSE OF PRELIMINARY ASSESSMENT

The primary objectives of the preliminary assessment are to determine:

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[1] Refer to Appendix 1, *Alleged Infraction Process*, at the end of this chapter, for more information.

[2] For the purposes of this manual, "*Acts*" include the *Canada Elections Act* and the *Referendum Act*.

[3] Refer to Chapter 15 for the specific criteria, which must be considered for recommending entering into a compliance agreement, Chapter 16 for recommending applying for an injunction and Chapter 17 for recommending a prosecution.

[4] Refer to the sample form entitled *Preliminary assessment of an oral complaint* shown in Appendix 2, at the end of this chapter.

a) whether sufficient and reasonable grounds exist to suspect that a specific offence under the *Acts* has been committed, and by whom;

b) whether, during the election period,[5] any act or omission is contrary to the *Acts*;

c) and whether sufficient and reasonable grounds exist to believe this may affect the fairness of the electoral process.[6]

The process includes the review of each specific allegation, the assessment of the information and evidence provided by the complainant and where applicable, by the Election Financing Directorate[7] and the inspection,[8] review and assessment of relevant documentary records[9] from Elections Canada.

4. COMPLAINTS INVOLVING ELECTION OFFICERS AND OTHER PERSONS

Where a complaint deals with alleged administrative irregularities by an Election Officer,[10] such complaint will be referred to the Chief Electoral Officer's attention.

Where investigation findings indicate that Election Officers or other persons, other than those for which prior approval to investigate was obtained, are suspected of an act or omission contrary to the *Act*, these new allegations must be referred to the Commissioner for directions.

5. CRITERIA FOR RECOMMENDING CLOSING A COMPLAINT FILE

At the preliminary assessment stage, the following criteria should be considered when recommending to the Commissioner the closing of a complaint file:

a) the allegations are from an anonymous complainant and the matter would not be serious enough to warrant the Commissioner pursuing the allegations in the public interest;[11]

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[5] See section 2 the *Canada Elections Act* for the definition of "election period".

[6] Refer to Chapter 16 – *Injunctions*, for the factors and criteria, which must be considered.

[7] Refer to Chapter 6 – *Election financing*, for more information on the assessment of complaint files referred to the Commissioner by the Election Financing Directorate.

[8] Refer to Chapter 10 – *Inspection, review and analysis of documents*, for more information on this activity.

[9] Refer to Appendix 1 of Chapter 8 for a list of election documents which can be accessed for the purpose of an investigation.

[10] See subsection 22(1) of the *Canada Elections Act* for the definition of "Election Officer".

[11] See section 511 of the *Canada Elections Act*.

b) the allegations are frivolous, unfounded or vague, and an interview with the complainant[12] would not likely result in the provision of additional details or clarification;

c) the matter does not fall within the Commissioner's jurisdiction;

d) corrective action or voluntary compliance with the requirements of the *Acts* have already been taken by the alleged offender;

e) although the allegations appear to be founded, the circumstances or the nature of the alleged prohibited activities are not serious enough to warrant pursuing any further proceedings which would be in the public interest;[13]

f) although the allegations appear to be founded, an investigation is not likely to result in the identification of any suspect[14] or in the collection of sufficient, reliable and substantial evidence to consider compliance agreements,[15] injunctions[16] or to lay an information[17] against any alleged offender;

g) although there may be sufficient grounds to believe that an act or omission is contrary to the *Act* or an offence was committed, the evidence suggests that there was no apparent criminal intent or that there is a successful defence open to the suspect;

h) the allegations and the facts cannot be verified or substantiated through available avenues of investigation or the inspection of available election documents;[18]

i) the date for filing an information[19] for the alleged offence has expired.[20]

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[12] Refer to Chapter 11 – *Interview techniques*, for more information on the requirements related to the interview of a complainant.

[13] Refer to chapters 15, 16 and 17 for more information on the criteria and public interest factors, which must be considered for these proceedings.

[14] Refer to Chapter 7 – *Official cautions*, for the definition of "suspect".

[15] Supra, footnote 3.

[16] Supra, footnote 3.

[17] Refer to Chapter 18 – *Consent of the Commissioner to prosecute*, for more information on the responsibilities of Investigators in laying an information.

[18] See section 2 of the *Canada Elections Act* for the definition of "election documents".

[19] Supra, footnote 17.

[20] See section 514 of the *Canada Elections Act*, for more information concerning the limitations of time for prosecutions.

5.1 Report requirements

The report to the Commissioner should clearly document the reasons for which the file should be closed, together with the recommendation that the Commissioner advise the complainant in due course of his decision to not pursue the matter any further and to close the complaint file.

6. FILES REQUIRING FURTHER ACTION

At the preliminary assessment stage, the following criteria should be considered when recommending further action to the Commissioner:

a) sufficient grounds exist to believe the allegations relate to an act or omission contrary to the *Act* or a specific offence under the *Acts* and the allegations are founded and serious enough to warrant pursuing further action, such as a compliance agreement,[21] an injunction[22] or a prosecution;[23]

b) reasonable grounds exist to believe that the facts can be verified and/or corroborated either through an interview of the complainant, and the inspection of relevant election documents, or other available avenues of investigation through Elections Canada audit processes[24] and enquiries for obtaining access[25] to the necessary documents, physical evidence and information from public sources, Election Officers,[26] witnesses[27] or the alleged offenders;[28]

c) initiating or continuing an investigation would not be necessary because there already exists on file sufficient reliable and substantial evidence to recommend a compliance agreement,[29] an injunction[30] or a prosecution against the offender;

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[21] Supra, footnote 3, for the criteria, which must be considered.

[22] Supra, footnote 3, for the criteria, which must be considered.

[23] Supra, footnote 3, for the criteria, which must be considered.

[24] Refer to Chapter 6 - *Election financing*, for more information on the handling and processing of these complaint files.

[25] Refer to Chapter 8 – *Access to records, books and documents*, for more information on the essential requirements regulating this activity.

[26] Refer to Chapter 22 – *Relations with election officers*, for more information on this matter.

[27] Refer to Chapter 7 – *Official cautions*, for the definition of "witness".

[28] Refer to Chapter 6 – *Election financing*, for the requirements regulating communications with suspects.

[29] Supra, footnote 3.

[30] Supra, footnote 3.

d) sufficient grounds exist to believe that further action would be justified under the circumstances and would also be in the public interest;[31]

e) the date for filing an information for the alleged offence has not expired.[32]

6.1 Report requirements

The preliminary assessment report should clearly document the findings and conclusions, the specific offences that are suspected, the name of the individual involved, the name of the alleged offender and the rationale supporting any recommendation for further action by the Commissioner.

When administrative measures are considered, the report should document the available options together with the objectives and advantages of the preferred recommendation.

When considering an investigation,[33] the report should include an outline of the objectives of any proposed investigation or enquiries, the scope and focus of the various phases, and steps of the proposed investigation or enquiries. It should also provide the names of the individuals to be interviewed, the information and evidence required and from whom, and any other appropriate follow-up measures which could be considered by the Commissioner in deciding how to address each specific alleged offence.

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[31] Refer to Chapter 17 – *The decision to prosecute*, for more information on the necessary requirements.

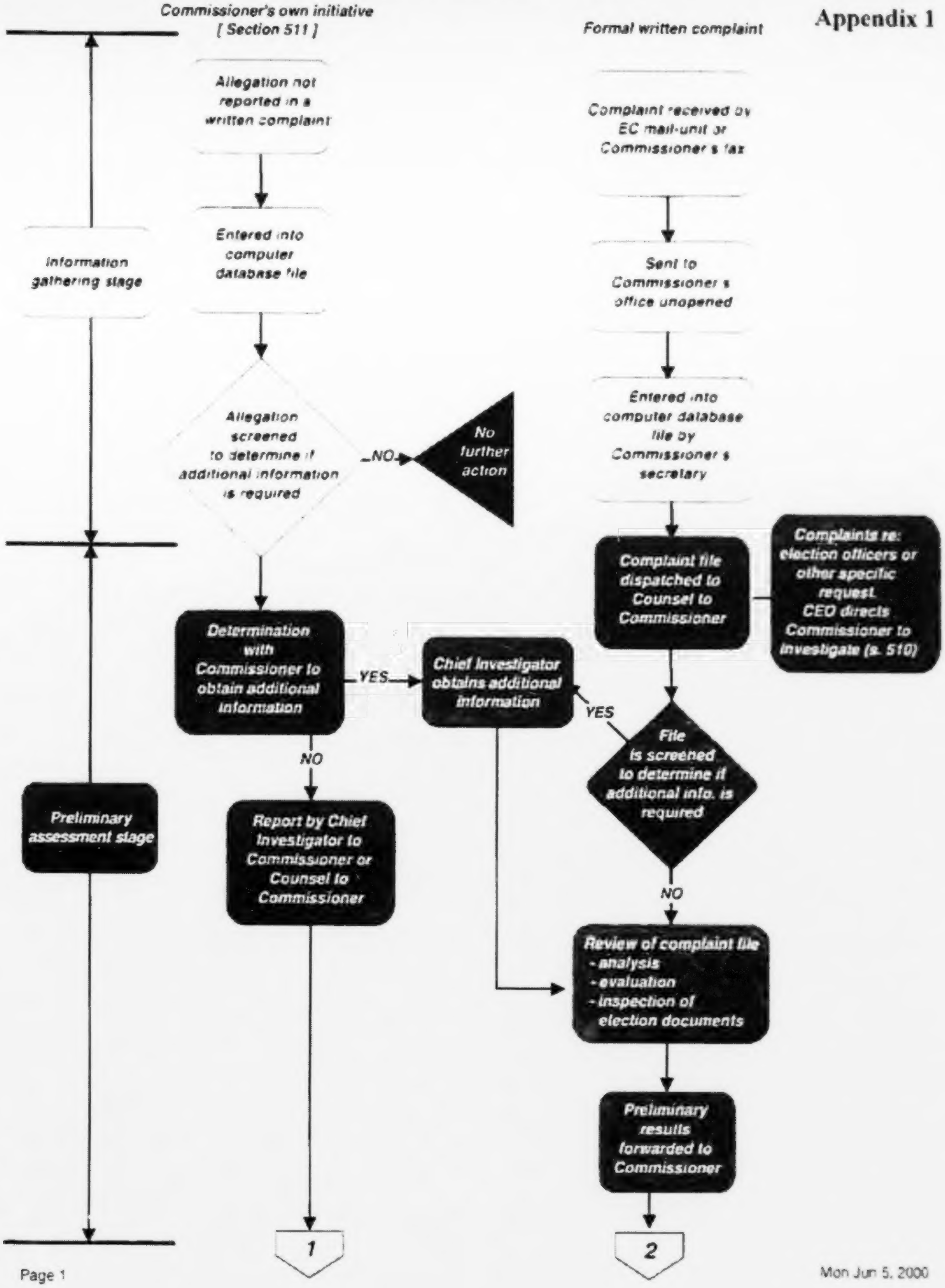
[32] Supra, footnote 20.

[33] In this case, refer to Chapter 4 – *Investigation policy*, for the assessment of factors impacting on the Commissioner's decision to initiate, continue or terminate an investigation.

Elections Canada
Commissioner of Canada Elections

ALLEGED INFRACTION PROCESS

Appendix 1


Commissioner's own initiative [Section 511]
Formal written complaint
Information gathering stage
Allegation not reported in a written complaint
Entered into computer database file
Allegation screened to determine if additional information is required
NO
No further action
Complaint received by EC mail-unit or Commissioner's fax
Sent to Commissioner's office unopened
Entered into computer database file by Commissioner's secretary
Complaint file dispatched to Counsel to Commissioner
Complaints re: election officers or other specific request. CEO directs Commissioner to investigate (s. 510)
Preliminary assessment stage
Determination with Commissioner to obtain additional information
YES
Chief Investigator obtains additional information
YES
File is screened to determine if additional info. is required
NO
Report by Chief Investigator to Commissioner or Counsel to Commissioner
NO
Review of complaint file
- analysis
- evaluation
- inspection of election documents
Preliminary results forwarded to Commissioner
1
2

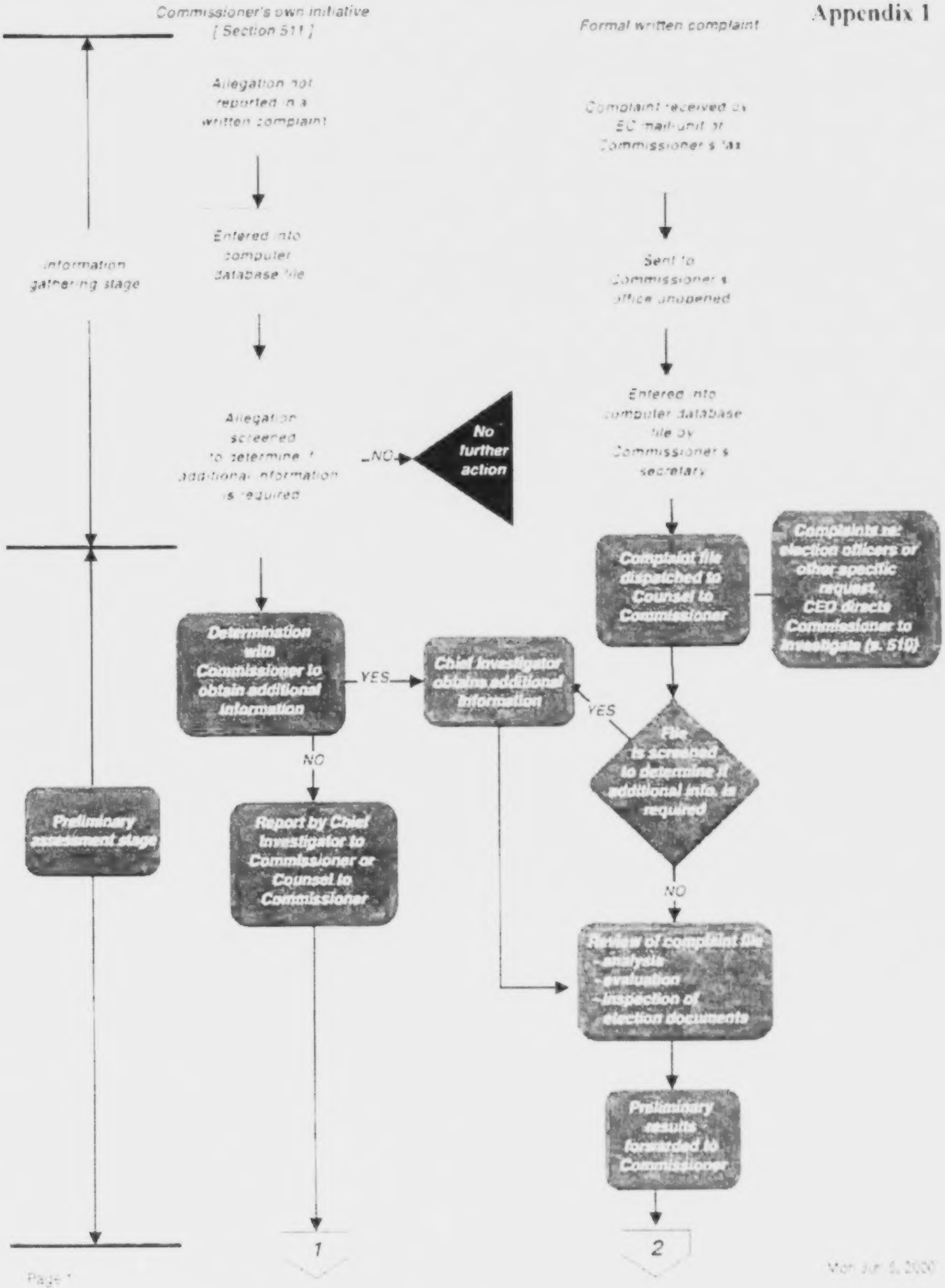
Page 1

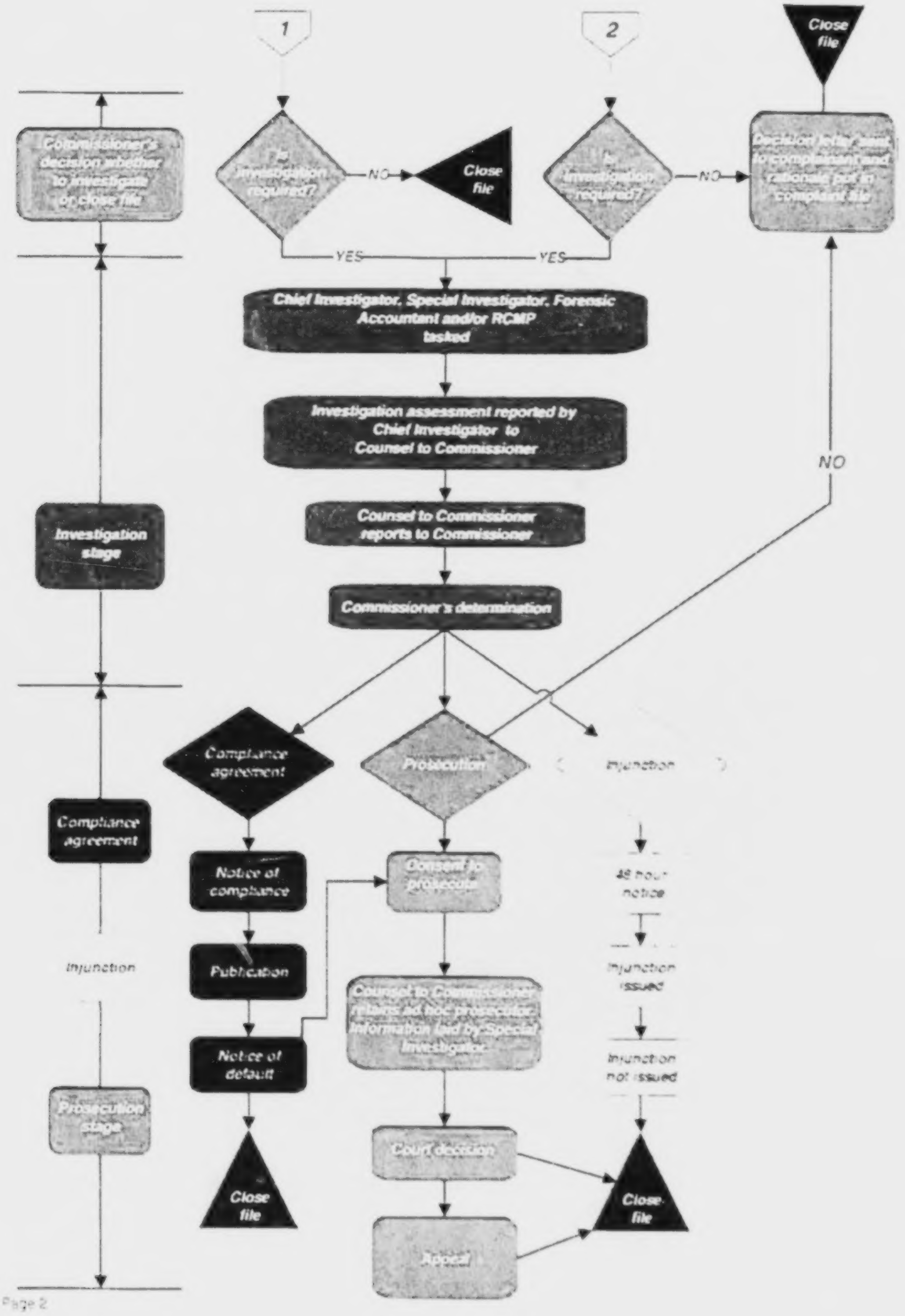
Mon Jun 5, 2000

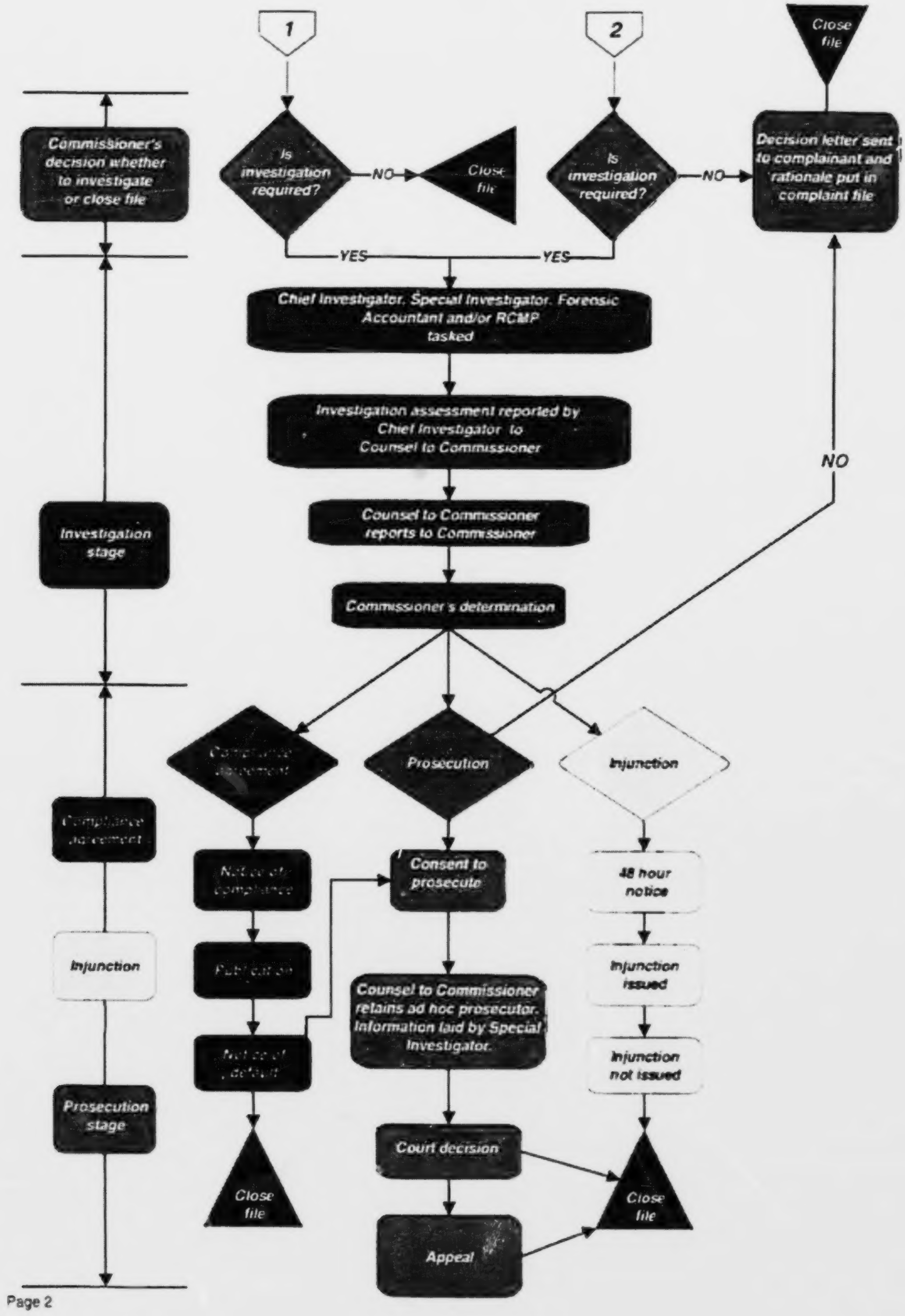
Elections Canada
Commissioner of Canada Elections

ALLEGED INFRACTION PROCESS

Appendix 1


Commissioner's own initiative [Section 511]
Formal written complaint
Information gathering stage
Allegation not reported in a written complaint
Entered into computer database file
Allegation screened to determine if additional information is required
NO
No further action
Complaint received by EC mail-unit or Commissioner's fax
Sent to Commissioner's office unopened
Entered into computer database file by Commissioner's secretary
Complaint file dispatched to Counsel to Commissioner
Complaints re: election officers or other specific request. CEO directs Commissioner to investigate (s. 510)
Preliminary assessement stage
Determination with Commissioner to obtain additional information
YES
Chief Investigator obtains additional information
YES
File is screened to determine if additional info. is required
NO
Report by Chief Investigator to Commissioner or Counsel to Commissioner
NO
Review of complaint file
- analysis
- evaluation
- inspection of election documents
Preliminary results forwarded to Commissioner
1
2


1
2
Close file
Commissioner's decision whether to investigate or close file
Is investigation required?
NO
Close file
Is investigation required?
NO
Decision letter sent to complainant and rationale put in complaint file
YES
YES
Chief Investigator, Special Investigator, Forensic Accountant and/or RCMP tasked
Investigation assessment reported by Chief Investigator to Counsel to Commissioner
NO
Investigation stage
Counsel to Commissioner reports to Commissioner
Commissioner's determination
Compliance agreement
Prosecution
Injunction
Compliance agreement
Notice of compliance
Consent to prosecute
48 hour notice
Injunction
Publication
Counsel to Commissioner retains ad hoc prosecutor. Information laid by Special Investigator
Injunction issued
Notice of default
Injunction not issued
Prosecution stage
Court decision
Close file
Close file
Appeal
Page 2


1
2
Close file
Commissioner's decision whether to investigate or close file
Is investigation required?
NO
Close file
Is investigation required?
NO
Decision letter sent to complainant and rationale put in complaint file
YES
YES
Chief Investigator, Special Investigator, Forensic Accountant and/or RCMP tasked
Investigation assessment reported by Chief Investigator to Counsel to Commissioner
NO
Investigation stage
Counsel to Commissioner reports to Commissioner
Commissioner's determination
Compliance agreement
Prosecution
Injunction
Compliance agreement
Notice of compliance
Consent to prosecute
48 hour notice
Injunction
Publication
Injunction issued
Counsel to Commissioner retains ad hoc prosecutor. Information laid by Special Investigator.
Notice of default
Injunction not issued
Prosecution stage
Court decision
Close file
Close file
Appeal
Page 2

Elections Canada

Commissioner of Canada Elections
Commissaire aux élections fédérales

Appendix 2

ÉVALUATION PRÉLIMINAIRE D'UNE PLAINTE ORALE
PRELIMINARY ASSESSMENT OF AN ORAL COMPLAINT

Date:

NO DOSSIER / FILE NO.	PLAIGNANT / PLAINTIFF	
OBJET / SUBJECT		
CIRCONSCRIPTION / ELECTORAL DISTRICT	LÉGISLATION ÉLECTORALE ELECTORAL LEGISLATION	Renvoi Cross reference

NATURE DE L'INCIDENT / NATURE OF CONCERN

ÉVALUATION PRÉLIMINAIRE PAR LE CONSEILLER JURIDIOUE
PRELIMINARY ASSESSMENT BY LEGAL COUNSEL

RECOMMANDATIONS / RECOMMENDATIONS

Dossier référé à / File refered to: ______________________

Discuté avec ___ conseiller juridique ___ enquêteur principal/Discussed with ___ legal counsel ___ chief investigator oui/yes [ ] non/no [ ]

Je suis d'accord avec la recommandation / I agree with the recommendation

____
Iniales du conseiller juridique
Initials of legal counsel

Je suis d'accord / I agree

____
Commissaire aux élections fédérales
Commissioner of Canada Elections

Elections Canada

CHAPTER 4

INVESTIGATION POLICY

Commissioner of Canada Elections

January 2004

INVESTIGATION POLICY

Table of Contents

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5. Public interest factors to consider 3

6. Report requirements 4

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1. INTRODUCTION

This chapter provides general information, direction and guidance to Investigators, the Chief Investigator and Senior Counsel to the Commissioner in the assessment of factors, which may affect the decision of the Commissioner of Canada Elections (the Commissioner) concerning the investigation of acts or omissions which could constitute offences under the *Acts*.[1]

2. POLICY

The recommendation to initiate, continue or terminate an investigation is based on the "Threshold Test and Standards" listed below. Where the Commissioner believes, on reasonable grounds, that an act or omission constituting a specific offence under the *Act* has been committed, is about or likely to be committed, the Commissioner may direct an investigation to be conducted according to the circumstances.

3. RESPONSIBILITIES

It is the responsibility of Senior Counsel to the Commissioner to assess all relevant circumstances and factors[2] and to make the appropriate recommendation to the Commissioner to initiate, continue or terminate an investigation of allegations of an act or omission that may constitute an offence under the *Acts*.

Senior Counsel to the Commissioner may, within the delegated authorization and only in the absence of the Commissioner, approve the initiation of an investigation on an urgent basis. The continuation of such an investigation is however subject to the Commissioner's approval in due course.

The Chief Investigator provides professional oral and written advice and recommendations on possible avenues of investigation and its likely outcome. The Chief Investigator, the Assistant Chief Investigators and the Investigators cannot initiate or terminate an investigation on their own.

The Commissioner must be kept informed in a timely fashion of all information and advice that may affect the decision to initiate, continue or terminate an investigation.

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[1] For the purpose of this manual, "*Acts*" include the *Canada Elections Act* and the *Referendum Act*.

[2] For more information on the responsibilities related to the assessment of factors affecting the decision making process of investigation, refer to Chapter 3 – *Preliminary assessment of alleged infractions*.

4. INVESTIGATION "THRESHOLD TEST AND STANDARDS"

All relevant circumstances and factors must be considered when a recommendation is made to initiate, continue or terminate an investigation; they include the following:

a) reasonable grounds to believe that the allegation deals with an alleged offence committed by an Election Officer[3] or a specific offence[4] committed by anyone under the *Act*;

b) reasonable grounds to believe that the allegation is founded on specific and verifiable leads, facts, information, or physical documentary evidence, and deals with an act or omission that could constitute a specific offence under the *Act*;[5]

c) reasonable grounds to believe that the public interest relating to the act or omission constituting an offence under the *Act* would justify committing investigative resources;

d) reasonable grounds to believe that the act or omission constituting an offence under the *Act* requires applying for an injunction[6] and whether sufficient grounds exist to believe that there is a reasonable prospect of identifying the suspect[7] and obtaining sufficient information to apply for an injunction;[8]

e) sufficient grounds to believe that the alleged offence was committed and that an investigation would provide sufficient, substantial, admissible and reliable evidence;[9]

f) sufficient grounds to believe that there is a reasonable prospect of identifying the suspect and obtaining compelling information or evidence to prove that an offence was committed by the alleged offender;

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[3] See subsection 22(1) of the *Canada Elections Act* for the definition of "election officer".

[4] See section 510 of the *Canada Elections Act* for the list of offences where the CEO may give direction to the Commissioner to make an inquiry.

[5] Refer to Appendix 1, at the end of this chapter, for the *Table of offences* under the *Canada Elections Act*.

[6] See Chapter 16 – *Injunctions*, for more information on the criteria and public interest factors.

[7] Refer to Chapter 7 – *Official cautions*, for a definition of "suspect".

[8] Supra, footnote 7.

[9] See Chapter 17 – *The decision to prosecute*, for further information on factors to consider.

g) reasonable grounds to believe that substantial, reliable and admissible evidence may be obtained from available avenues of investigation such as the complainant, access to public records and documents,[10] inspection of election documents,[11] and interviewing Election Officers[12] and witnesses;[13]

h) reasonable grounds to believe that suspects[14] would agree to cooperate and provide information and evidence, whether self-incriminating or against other individuals;

i) whether all reliable, substantial, available and admissible information or evidence have been collected on which to reach an informed decision;

j) whether an assessment of the credibility of the information, the weight of the evidence and the reliability of witnesses has been assessed on objective indicators or factors;[15]

k) whether any consideration should be given to any possible effect on the personal circumstances of anyone connected to the investigation;

l) whether the inherent operational expenses associated with a more selective or comprehensive investigative approach (referral to other investigative agencies) to the various categories of offences would be warranted and justified under the circumstances;

m) public interest factors to consider as described in section 5 below.

5. PUBLIC INTEREST FACTORS TO CONSIDER

In addition to the aforementioned standards, the following public interest factors should be taken into account in decisions related to investigation; it should be noted that no one factor is determinative and that the list is not exhaustive:

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[10] Refer to Chapter 8 – *Access to records, books and documents*, for more information on the policies and procedures governing this investigative approach.

[11] Refer to Chapter 10 – *Inspection, review and analysis of documents*, for more information on the procedures and factors to take into account.

[12] Refer to Chapter 22 – *Relations with election officers*, for more details on what information may or may not be disclosed to Election Officers.

[13] Refer to Chapter 11 – *Interview techniques*, and Chapter 7 – *Official cautions*, for more information on policies and procedures to follow in this investigative approach.

[14] Supra, footnote 8.

[15] Refer to Chapter 12 – *Investigation report format*, for the essential requirements to consider.

a) the circumstances, the views, the reliability and credibility of the complainant[16] and the specificity of the allegation raised;

b) the need to maintain public confidence in the administration of justice and the integrity and fairness of the electoral process;

c) the prevalence of the type of offence and any related need for a generic or specific deterrence devolving from the investigative process, compliance agreements, injunctions and court proceedings;

d) the staleness of the alleged offence or likely length and expense of an investigation in relation to the seriousness of the alleged offence;

e) the availability and efficacy of any alternatives to investigation, such as administrative remedies and voluntary compliance measures by the alleged offender.

6. REPORT REQUIREMENTS

Where the preliminary assessment of a complaint file or the assessment of investigation findings may impact on the Commissioner's decision to initiate, continue or terminate an investigation, the report should clearly document the standards and factors which were considered, and a recommendation to the Commissioner for a suggested course of action.

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[16] Refer to Chapter 14 – *Assessment of investigation findings*, for more information on this activity.

Appendix 1

TABLE OF OFFENCES

CANADA ELECTIONS ACT

	Offences	Punishment*	Maximum Penalty
General Provisions			
▪ obstruction, etc., of electoral process otherwise than under subsection 480(2) or section 481 or 482 or sections 483 to 499	480(1)	500(5) 502(1)(*d*)	$5,000 fine, five year imprisonment, or both
▪ intention of preventing public meetings	(2)	500(5) 502(1)(*d*)	$5,000 fine, five year imprisonment, or both
▪ offering bribe to influence an elector to vote or refrain from voting	481(1)	500(5)	$5,000 fine, five year imprisonment, or both
▪ accepting bribe in the circumstances described in subsection (1)	(2)	500(5)	$5,000 fine, five year imprisonment, or both
▪ intimidation or duress, etc.	482	500(5)	$5,000 fine, five year imprisonment, or both
Electoral Rights — Offences under Part 1			
▪ voting knowing not qualified or entitled — paragraph 5(*a*)	483(*a*)	500(5)	$5,000 fine, five year imprisonment, or both
▪ inducing a person not qualified or entitled to vote, to vote (knowingly) — paragraph 5(*b*)	(*a*)	500(5)	$5,000 fine, five year imprisonment, or both
▪ voting more than once — section 7	(*b*)	500(5) 502(2)(*a*) 502(3)	$5,000 fine, five year imprisonment, or both
Election Officers — Offences under Part 3			
▪ failure to return election documents and	484(1)	500(1)	$1,000 fine, three month imprisonment, or both

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[*] Section 501 of the Act provides that, in addition to any punishment that may be imposed under the Act, the court may order a person to perform community service, to compensate a person who has suffered damages as a result of the commission of the offence, to perform any obligation the non-performance of which gave rise to the offence, or to take any other reasonable measure that the court considers appropriate to ensure compliance with the Act.

	Offences	**Punishment***	**Maximum Penalty**
election materials — paragraph 43(*c*)			
▪ returning officer — failure to take necessary election proceedings (wilfully) — subsection 24(3)	484(2)	500(3)	$2,000 fine, six month imprisonment, or both
▪ acting as election officer knowing requirements not met — subsection 22(6)	(3)(*a*)	500(5)	$5,000 fine, five year imprisonment, or both
▪ communication of information for unauthorized purpose (knowingly) — subsection 23(2)	(*b*)	500(5)	$5,000 fine, five year imprisonment, or both
▪ engaging in politically partisan conduct — returning officer (knowingly) — subsection 24(6)	(*c*)	500(5)	$5,000 fine, five year imprisonment, or both
▪ acting in another capacity — returning officer or assistant returning officer (wilfully) — section 31	(*d*)	500(5)	$5,000 fine, five year imprisonment, or both
▪ obstruction of election officer (wilfully) — paragraph 43(*a*)	(*e*)	500(5) 502(2)(*b*) 502(2)(*c*) 502(3)	$5,000 fine, five year imprisonment, or both
▪ impersonation of revising agent (wilfully) — paragraph 43(*b*)	(*e*)	500(5) 502(2)(*b*) 502(2)(*c*) 502(3)	$5,000 fine, five year imprisonment, or both
▪ failure to return election documents and election materials — former election officer (wilfully) — paragraph 43(*c*)	(*f*)	500(5)	$5,000 fine, five year imprisonment, or both
Register of Electors — Offences under Part 4			
▪ unauthorized use of personal information recorded in Register of Electors (knowingly) — paragraph 56(*e*)	485(1)	500(2)	$1,000 fine, three month imprisonment, or both
▪ forbidden acts re Register of Electors — (knowingly) paragraphs 56(*a*) to (*c*) and (wilfully) paragraph 56(*d*)	(2)	500(5) 502(2)(*d*) 502(2)(*e*) 502(3)	$5,000 fine, five year imprisonment, or both

	Offences	Punishment*	Maximum Penalty
Candidates — Offences under Part 6			
▪ failure to appoint official agent — subsection 83(1)	486(1)	500(1)	$1,000 fine, three month imprisonment, or both
▪ failure to appoint auditor — subsection 83(2)	(1)	500(1)	$1,000 fine, three month imprisonment, or both
▪ failure to appoint a replacement official agent or auditor — section 87	(1)	500(1)	$1,000 fine, three month imprisonment, or both
▪ refusal to give access to building — section 81	(2)	500(3)	$2,000 fine, six month imprisonment, or both
▪ signing of nomination paper knowing ineligible — section 89	(3)(*a*)	500(5) 502(2)(*f*) 502(3)	$5,000 fine, five year imprisonment, or both
▪ ineligible person acting as official agent — subsection 90(1)	(*b*)	500(5)	$5,000 fine, five year imprisonment, or both
▪ ineligible person acting as auditor (wilfully) — subsection 90(2)	(*b*)	500(5)	$5,000 fine, five year imprisonment, or both
▪ making false statement re candidate (knowingly) — section 91	(*c*)	500(5)	$5,000 fine, five year imprisonment, or both
▪ publication of false statement of withdrawal of candidate (knowingly) — section 92	(*d*)	500(5) 502(1)(*a*) 502(3)	$5,000 fine, five year imprisonment, or both
Revision of List of Electors — Offences under Part 7			
▪ applying improperly to be included on list of electors (wilfully) — paragraph 111(*b*) or (*c*)	487(1)	500(2)	$1,000 fine, three month imprisonment, or both
▪ unauthorized use of personal information contained in list of electors (knowingly) — paragraph 111(*f*)	(1)	500(2)	$1,000 fine, three month imprisonment, or both
▪ forbidden acts re list of electors — (wilfully) paragraph 111(*a*) or (*e*) or (knowingly) paragraph 111(*d*)	(2)	500(5) 502(2)(*g*) 502(3)	$5,000 fine, five year imprisonment, or both

	Offences	Punishment*	Maximum Penalty
Preparation for the Vote — Offences under Part 8			
- unauthorized printing of ballots — paragraph 126(*b*)	488(1)	500(2)	$1,000 fine, three month imprisonment, or both
- failure to return ballots or unused ballot paper — printer (wilfully) — subsection 116(5)	(2)(*a*)	500(5)	$5,000 fine, five year imprisonment, or both
- forgery of ballot — paragraph 126(*a*)	(*b*)	500(5)	$5,000 fine, five year imprisonment, or both
- knowingly printing extra ballot papers — paragraph 126(*c*)	(*b*)	500(5)	$5,000 fine, five year imprisonment, or both
- printing of ballot with intent to influence vote — paragraph 126(*d*)	(*b*)	500(5)	$5,000 fine, five year imprisonment, or both
- manufacture, etc., of ballot box with secret compartment — paragraph 126(*e*)	(*b*)	500(5)	$5,000 fine, five year imprisonment, or both
Voting — Offences under Part 9			
- failure to allow time to vote — employer — subsection 132(1)	489(1)(*a*)	500(1)	$1,000 fine, three month imprisonment, or both
- making deductions from employees' wages for time given to vote — subsection 133(1)	(*a*)	500(1)	$1,000 fine, three month imprisonment, or both
- prohibited use of loudspeaker — section 165	(*b*)	500(1)	$1,000 fine, three month imprisonment, or both
- wearing of emblems, etc., in polling station — paragraph 166(1)(*b*)	(*c*)	500(1)	$1,000 fine, three month imprisonment, or both
- assisting as a friend more than one elector — subsection 155(2)	(2)(*a*)	500(2)	$1,000 fine, three month imprisonment, or both
- failure to maintain secrecy — elector — subsection 164(2)	(*b*)	500(2)	$1,000 fine, three month imprisonment, or both
- display of campaign literature in polling place — paragraph 166(1)(*a*)	(*c*)	500(2)	$1,000 fine, three month imprisonment, or both

	Offences	Punishment*	Maximum Penalty
▪ preventing employee from using voting time — employer — section 134	(3)(*a*)	500(5)	$5,000 fine, five year imprisonment, or both
▪ disclosing for whom elector voted — friend or relative (wilfully) — subsection 155(4)	489(3)(*b*)	500(5)	$5,000 fine, five year imprisonment, or both
▪ failure to maintain secrecy — candidate, an election officer or representative of a candidate — subsection 164(1)	(*c*)	500(5)	$5,000 fine, five year imprisonment, or both
▪ influencing vote in polling station — paragraph 166(1)(*c*)	(*d*)	500(5)	$5,000 fine, five year imprisonment, or both
▪ prohibited acts re ballots (knowingly) — paragraphs 167(1)(*a*) to (*d*)	(*e*)	500(5) 502(2)(*h*) 502(3)	$5,000 fine, five year imprisonment, or both
▪ prohibited acts re ballots or ballot box with intent to influence vote (wilfully) — paragraphs 167(2)(*a*) to (*d*)	(*e*)	500(5) 502(2)(*h*) 502(3)	$5,000 fine, five year imprisonment, or both
▪ initialing ballot with intent to influence vote — deputy returning officer — paragraph 167(3)(*a*)	(*f*)	500(5)	$5,000 fine, five year imprisonment, or both
▪ placing identifying mark on ballot — deputy returning officer — paragraph 167(3)(*b*)	(*g*)	500(5)	$5,000 fine, five year imprisonment, or both
Advance Polling — Offences under Part 10			
▪ failure to permit person to vote — deputy returning officer (wilfully) — subsection 174(1)	490(*a*)	500(5)	$5,000 fine, five year imprisonment, or both
▪ failure to record vote — poll clerk (wilfully) — subsection 174(2)	(*b*)	500(5)	$5,000 fine, five year imprisonment, or both
▪ improper handling of ballot box and ballots at advance poll — deputy returning officer — section 175	(*c*)	500(5)	$5,000 fine, five year imprisonment, or both
▪ failure to cross names off list of electors — returning officer — subsection 176(2) or (3) — deputy returning officer — subsection 176(3)	(*c*)	500(5)	$5,000 fine, five year imprisonment, or both

	Offences	Punishment*	Maximum Penalty
Special Voting Rules — Offences under Part 11			
▪ failure to take required measures re ballots and special ballots — returning officer — section 275	491(1)	500(1)	$1,000 fine, three month imprisonment, or both
▪ prohibited acts re vote under special voting rules — (wilfully) paragraphs 281(*a*) and (*b*) and (knowingly) paragraphs 281(*c*) to (*f*)	(2)	500(2)	$1,000 fine, three month imprisonment, or both
▪ failure to perform duties with respect to receipt of vote — deputy returning officer — section 212, subsections 213(1) and (4) and 214(1), section 257 and subsection 258(3)	(3)(*a*)	500(5)	$5,000 fine, five year imprisonment, or both
▪ failure to perform duties re counting of the vote — being a special ballot officer, subsections 267(1) and (2), section 268 and subsections 269(1) and (2)	(*b*)	500(5)	$5,000 fine, five year imprisonment, or both
▪ failure to perform duties re counting of the vote — deputy returning officer or poll clerk — subsection 276(1), deputy returning officer — subsection 277(1), poll clerk — subsection 277(2), deputy returning officer — subsection 277(3), deputy returning officer or poll clerk — subsection 278(1) or (3) or, deputy returning officer — section 279	(*c*)	500(5)	$5,000 fine, five year imprisonment, or both
▪ prohibited acts re special voting rules (wilfully) — paragraph 281(*g*) or (*h*)	(*d*)	500(5)	$5,000 fine, five year imprisonment, or both
▪ intimidation or inducement re vote under special voting rules — paragraph 282(*a*) or (*b*)	(*e*)	500(5)	$5,000 fine, five year imprisonment, or both
Counting Votes — Offences under Part 12			
▪ failure to safeguard ballot box — returning officer — section 292	492(1)	500(1)	$1,000 fine, three month imprisonment, or both

	Offences	Punishment*	Maximum Penalty
▪ failure to perform duties re counting of the vote — deputy returning officer — sections 283 to 288	492(2)(*a*)	500(5)	$5,000 fine, five year imprisonment, or both
▪ premature counting of votes cast at advance poll (knowingly) — subsection 289(3)	(*b*)	500(5)	$5,000 fine, five year imprisonment, or both
Validation of Results by the Returning Officer — Offence under Part 13			
▪ failure to appear before returning officer (wilfully) — subsection 296(4)	493	500(2)	$1,000 fine, three month imprisonment, or both
Return of the Writ — Offences under Part 15			
▪ failure to declare candidate elected — returning officer (wilfully) — subsection 313(1)	494(*a*)	500(5)	$5,000 fine, five year imprisonment, or both
▪ failure to transmit election documents — returning officer (wilfully) — section 314	(*b*)	500(5)	$5,000 fine, five year imprisonment, or both
Communications — Offences under Part 16			
▪ failure to indicate authority for election advertising — candidate, registered party or person acting on behalf of a candidate or registered party — section 320	495(1)(*a*)	500(1)	$1,000 fine, three month imprisonment, or both
▪ failure to provide election survey information — subsection 326(1) or (2)	(*b*)	500(1)	$1,000 fine, three month imprisonment, or both
▪ failure to provide report on election survey results — sponsor of an election survey — subsection 326(3)	(*b*)	500(1)	$1,000 fine, three month imprisonment, or both
▪ failure to indicate survey not based on recognized statistical methods — section 327	(*c*)	500(1)	$1,000 fine, three month imprisonment, or both
▪ prohibition of election advertising	(2)(*a*)	500(2)	$1,000 fine, three month imprisonment, or both

	Offences	Punishment*	Maximum Penalty
posters on residential premises — landlord or condominium corporation (wilfully) — section 322			
▪ removal of election advertising — section 325	495(2)(*b*)	500(2)	$1,000 fine, three month imprisonment, or both
▪ inducement by foreigners (wilfully) — section 331	(3)	500(3)	$2,000 fine, six month imprisonment, or both
▪ failure to provide election survey information — subsection 326(1) or (2)	(4)(*a*)	500(4)	$25,000 fine
▪ failure to provide report on election survey results — sponsor of an election survey (wilfully) — subsection 326(3)	(*a*)	500(4)	$25,000 fine
▪ failure to indicate survey not based on recognized statistical methods (wilfully) — section 327	(*b*)	500(4)	$25,000 fine
▪ transmission of election survey results during blackout period (wilfully) — subsection 328(2)	(*c*)	500(4)	$25,000 fine
▪ premature transmission of election results (wilfully) — section 329	(*d*)	500(4)	$25,000 fine
▪ foreign broadcasting (wilfully) — subsection 330(1) or (2)	(*e*)	500(4) 502(1)(*b*) 502(3)	$25,000 fine
▪ failure to make broadcasting time available (wilfully) — broadcaster — subsection 335(1) or, network operator — subsection 335(2)	(*f*)	500(4)	$25,000 fine
▪ failure to make additional broadcasting time available — broadcaster (wilfully) — subsection 339(3)	(*g*)	500(4)	$25,000 fine
▪ failure to adjust broadcasting time (wilfully) — subsection 339(4)	(*g*)	500(4)	$25,000 fine
▪ failure to make free broadcasting time available — network operator (wilfully) — subsection 345(1)	(*g*)	500(4)	$25,000 fine
▪ failure to charge lowest rate for broadcasting time or advertising space	(*h*)	500(4)	$25,000 fine

	Offences	Punishment*	Maximum Penalty
(wilfully) — section 348			
▪ fails to comply with an allocation of or entitlement to broadcasting time under this Act — broadcaster or network operator	495(4)(*i*)	500(4)	$25,000 fine
▪ makes available to a registered party or eligible party within the period described in subsection 335(1) more broadcasting time than is required to be made — broadcaster or network operator — under sections 337 and 338 or entitlement under section 339, without making available to each other registered party or eligible party an amount of additional equivalent broadcasting time	(*j*)	500(4)	$25,000 fine
▪ conducting election advertising using government means of transmission (knowingly) — subsection 321(1)	(5)(*a*)	500(5)	$5,000 fine, five year imprisonment, or both
▪ conducting election advertising during blackout period (knowingly) — subsection 323(1)	(*a*)	500(5)	$5,000 fine, five year imprisonment, or both
▪ causing transmission of election survey results during blackout period (knowingly) — subsection 328(1)	(*b*)	500(5)	$5,000 fine, five year imprisonment, or both
Third Party Election Advertising — Offences under Part 17			
▪ exceeding election advertising expense limits — subsections 350(1) to (3)	496(1)(*a*)	500(1)	$1,000 fine, three month imprisonment, or both
		500(6) (exception 503(1)-(3))	Third parties liable to fines five times the amount they overspent on advertising
▪ failure to identify self in advertisement — section 352	(*b*)	500(1)	$1,000 fine, three month imprisonment, or both
▪ failure to register — subsection 353(1)	(*c*)	500(1)	$1,000 fine, three month imprisonment, or both
		505(3)	If convicted as a group or corporation, liable to a $10,000 fine

	Offences	Punishment*	Maximum Penalty
▪ failure to appoint financial agent — section 354	(*d*)	500(1)	$1,000 fine, three month imprisonment, or both
▪ failure to appoint auditor — subsection 355(1)	496(1)(*d*)	500(1)	$1,000 fine, three month imprisonment, or both
▪ use of anonymous contributions — subsection 357(3)	(*e*)	500(1)	$1,000 fine, three month imprisonment, or both
▪ use of foreign contributions — section 358	(*e*)	500(1)	$1,000 fine, three month imprisonment, or both
▪ failure to file election advertising report — subsection 359(1)	(*f*)	500(1)	$1,000 fine, three month imprisonment, or both
▪ failure to provide bills or receipts on request — subsection 359(9)	(*f*)	500(1)	$1,000 fine, three month imprisonment, or both
▪ exceeding or circumventing election advertising expense limits — third party (wilfully) — subsections 350(1) to (3) or section 351	(2)(*a*)	500(5) (exception 503(1)-(3))	$5,000 fine, five year imprisonment, or both
		500(6)	Third parties liable to fines five times the amount they overspent on advertising
▪ failure to register — third party (wilfully) — subsection 353(1)	(*b*)	500(5)	$5,000 fine, five year imprisonment, or both
		505(4)	Third parties that are groups or corporations are liable to $25,000 fines
▪ failure to file election advertising report — third party (wilfully) — subsection 359(1)	(*c*)	500(5)	$5,000 fine, five year imprisonment, or both
Finance — Offences under Part 18			
▪ failure to provide statement of assets and liabilities or related documents — registered party — section 372	497(1)(*a*)	500(1)	$1,000 fine, three month imprisonment, or both
▪ failure to comply with requirements re appointment of registered agent, chief agent or auditor — registered party — subsection 375(3) or, registered party or eligible party — section 378, subsection 379(1) or (2) or section 380	(*b*)	500(1)	$1,000 fine, three month imprisonment, or both
▪ failure to report changes to registered	(*c*)	500(1)	$1,000 fine, three month imprisonment, or both

	Offences	Punishment*	Maximum Penalty
party information — registered party — subsection 382(1) or (4)			
▪ failure to confirm validity of information on party — registered party — section 384	497(1)(*d*)	500(1)	$1,000 fine, three month imprisonment, or both
▪ failure to provide financial transactions return or election expenses return or related documents — chief agent of a deregistered political party — section 392	(*e*)	500(1) 506	$1,000 fine, three month imprisonment, or both Deregistered party that offends this section is liable to $25,000 fine
▪ failure to provide financial transactions return or related documents — chief agent of a merging registered party — section 403	(*h*)	500(1)	$1,000 fine, three month imprisonment, or both
▪ failure to register — electoral district association — section 403.01	(*h*.01)	500(1)	$1,000 fine, three month imprisonment, or both
▪ financial activity during an election period — electoral district association of a registered party — section 403.04	(*h*.02)	500(1)	$1,000 fine, three month imprisonment, or both
▪ failure to provide statement of assets and liabilities or related documents — registered association — section 403.05	(*h*.03)	500(1)	$1,000 fine, three month imprisonment, or both
▪ making erroneous declaration — financial agent of a registered association — section 403.051	(*h*.031)	500(1)	$1,000 fine, three month imprisonment, or both
▪ failure to comply with requirements re: appointment of electoral district agent — registered association — subsection 403.09(2)	(*h*.04)	500(1)	$1,000 fine, three month imprisonment, or both
▪ failure to comply with requirements re: appointment of financial agent or auditor — registered association — section 403.12, 403.13 or 403.14	(*h*.05)	500(1)	$1,000 fine, three month imprisonment, or both
▪ failure to report changes to registered association information — registered association — subsection 403.16(1)	(*h*.06)	500(1)	$1,000 fine, three month imprisonment, or both
▪ failure to confirm validity of information concerning association —	(*h*.07)	500(1)	$1,000 fine, three month imprisonment, or both

	Offences	Punishment*	Maximum Penalty
registered association — section 403.17			
▪ failure to provide financial transactions return for fiscal period or related documents — financial agent of a deregistered electoral district association — section 403.26	497(1)(*h*.08)	500(1)	$1,000 fine, three month imprisonment, or both
▪ failure to provide financial transactions return or related documents — financial agent of a registered association — subsection 403.35(1), (2) or (4)	(*h*.09)	500(1)	$1,000 fine, three month imprisonment, or both
▪ failure to forward undetermined contributions — financial agent of a registered association — section 403.36	(*h*.1)	500(1)	$1,000 fine, three month imprisonment, or both
▪ providing incomplete financial transactions return — financial agent of a registered association — paragraph 403.38(*b*)	(*h*.11)	500(1)	$1,000 fine, three month imprisonment, or both
▪ making contribution while ineligible — person or entity — subsection 404(1)	(*i*)	500(1)	$1,000 fine, three month imprisonment, or both
▪ failure to return or pay amount of ineligible contribution — chief agent of a registered party, financial agent of a registered association, official agent of a candidate or financial agent of a leadership contestant or nomination contestant — subsection 404(2)	(*i*.1)	500(1)	$1,000 fine, three month imprisonment, or both
▪ making prohibited transfer — registered party or electoral district association of one — subsection 404.3(1)	(*i*.2)	500(1)	$1,000 fine, three month imprisonment, or both
▪ failure to issue receipt — person who is authorized to accept contributions on behalf of a registered party, a registered association, a candidate, a leadership contestant or a nomination contestant — section 404.4	(*i*.3)	500(1)	$1,000 fine, three month imprisonment, or both
▪ circumventing contribution limit — person or entity — subsection 405.2(1)	(*i*.4)	500(1)	$1,000 fine, three month imprisonment, or both
▪ concealing source of contribution —	(*i*.5)	500(1)	$1,000 fine, three month imprisonment, or both

	Offences	Punishment*	Maximum Penalty
person or entity — subsection 405.2(2)			
▪ making contribution from others' contributions — person or entity — subsection 405.3(1)	497(1)(*i*.6)	500(1)	$1,000 fine, three month imprisonment, or both
▪ failure to return or pay amount of contribution — person authorized under this Act to accept contributions — section 405.4	(*i*.7)	500(1)	$1,000 fine, three month imprisonment, or both
▪ failure to document payment — subsection 410(1) or (2)	(*j*)	500(1)	$1,000 fine, three month imprisonment, or both
▪ failure to provide documentation of expenditures — person authorized to pay petty expenses — subsection 411(3)	(*k*)	500(1)	$1,000 fine, three month imprisonment, or both
▪ paying excessive petty expenses — person authorized to pay petty expenses — subsection 411(4)	(*k*)	500(1)	$1,000 fine, three month imprisonment, or both
▪ exceeding election expense limit — chief agent — subsection 423(1)	(*l*)	500(1)	$1,000 fine, three month imprisonment, or both
		507	Registered party that offends this section is liable to $25,000 fine
▪ colluding to circumvent election expense limit — registered party or third party — subsection 423(2)	(*l*)	500(1)	$1,000 fine, three month imprisonment, or both
		507	Registered party that offends this section is liable to $25,000 fine
▪ failure to provide financial transactions return or related documents — chief agent — section 424	(*m*)	500(1)	$1,000 fine, three month imprisonment, or both
		507	Registered party that offends this section is liable to $25,000 fine
▪ failure to provide quarterly return — chief agent — section 424.1	(*m*.1)	500(1)	$1,000 fine, three month imprisonment, or both
▪ failure to forward undetermined contributions — registered agent — section 425	(*n*)	500(1)	$1,000 fine, three month imprisonment, or both
		507	Registered party that offends this section is liable to $25,000 fine
▪ providing incomplete financial transactions return — chief agent —	(*o*)	500(1)	$1,000 fine, three month imprisonment, or both

	Offences	Punishment*	Maximum Penalty
paragraph 427(*b*)		507	Registered party that offends this section is liable to $25,000 fine
▪ failure to provide election expenses return or related documents — chief agent — section 429	497(1)(*q*)	500(1)	$1,000 fine, three month imprisonment, or both
		507	Registered party that offends this section is liable to $25,000 fine
▪ providing incomplete election expenses return — chief agent — paragraph 431(*b*)	(*q*.01)	500(1)	$1,000 fine, three month imprisonment, or both
		507	Registered party that offends this section is liable to $25,000 fine
▪ failure to report provincial division changes — chief executive officer of a provincial division — subsection 435.02(5)	(*q*.011)	500(1)	$1,000 fine, three month imprisonment, or both
▪ failure to inform of leadership contest or related changes — registered party — subsection 435.04(1) or (2)	(*q*.02)	500(1)	$1,000 fine, three month imprisonment, or both
▪ failure to register for a leadership contest — person — subsection 435.05(1)	(*q*.03)	500(1)	$1,000 fine, three month imprisonment, or both
▪ failure to comply with requirements re: appointment of leadership campaign agent, financial agent or auditor — leadership contestant — subsection 435.08(2) or section 435.11, 435.12 or 435.13	(*q*.04)	500(1)	$1,000 fine, three month imprisonment, or both
▪ failure to report changes to leadership contestant information — leadership contestant — subsection 435.15(1) or (2)	(*q*.05)	500(1)	$1,000 fine, three month imprisonment, or both
▪ failure to file statement of withdrawal — leadership contestant — section 435.16	(*q*.06)	500(1)	$1,000 fine, three month imprisonment, or both
▪ failure to file statement of withdrawal of acceptance of leadership contestant — registered party — section 435.17	(*q*.07)	500(1)	$1,000 fine, three month imprisonment, or both
▪ failure to satisfy bank account requirements — financial agent of a	(*q*.08)	500(1)	$1,000 fine, three month imprisonment, or both

	Offences	Punishment*	Maximum Penalty
leadership contestant — section 435.21			
• failure to pay recoverable claim in timely manner — leadership contestant or financial agent of one — section 435.24	497(1)(*q*.09)	500(1)	$1,000 fine, three month imprisonment, or both
• failure to provide leadership campaign return or related documents — financial agent of a leadership contestant — subsection 435.3(1), (2) or (6)	(*q*.1)	500(1)	$1,000 fine, three month imprisonment, or both
• failure to comply with a requirement of the Chief Electoral Officer — financial agent of a leadership contestant — subsection 435.3(4)	(*q*.11)	500(1)	$1,000 fine, three month imprisonment, or both
• failure to send declaration re: leadership campaign return to agent — leadership contestant — subsection 435.3(7)	(*q*.12)	500(1)	$1,000 fine, three month imprisonment, or both
• failure to provide return on contributions or related documents — financial agent of a leadership contestant — subsections 435.31(1) to (3)	(*q*.13)	500(1)	$1,000 fine, three month imprisonment, or both
• failure to forward undetermined contributions — financial agent of a leadership contestant — section 435.32	(*q*.14)	500(1)	$1,000 fine, three month imprisonment, or both
• failure to provide updated financial reporting documents — financial agent of a leadership contestant — subsection 435.35(1) or (3)	(*q*.15)	500(1)	$1,000 fine, three month imprisonment, or both
• providing incomplete financial return — leadership contestant or financial agent of one — paragraph 435.43(*b*)	(*q*.16)	500(1)	$1,000 fine, three month imprisonment, or both
• failure to dispose of surplus leadership campaign funds — financial agent of a leadership contestant — subsection 435.45(2) or section 435.46	(*q*.17)	500(1)	$1,000 fine, three month imprisonment, or both
• failure to satisfy bank account requirements — official agent —	(*r*)	500(1)	$1,000 fine, three month imprisonment, or both

	Offences	Punishment*	Maximum Penalty
section 437			
▪ incurring more than maximum allowed for notice of nomination meetings — official agent, candidate or person authorized under paragraph 446(*c*) — subsection 439(2)	497(1)(*s*)	500(1) 502(1)(*c*)	$1,000 fine, three month imprisonment, or both
▪ exceeding election expenses limit — official agent, candidate, person authorized under paragraph 446(*c*) — subsection 443(1)	(*s*)	500(1) 502(1)(*c*)	$1,000 fine, three month imprisonment, or both
▪ colluding to circumvent election expense limit — official agent, candidate, person authorized under paragraph 446(*c*) or third party — subsection 443(2)	(*s*)	500(1) 502(1)(*c*)	$1,000 fine, three month imprisonment, or both
▪ failure to pay recoverable claim in timely manner — official agent — subsection 445(1)	(*t*)	500(1)	$1,000 fine, three month imprisonment, or both
▪ failure to provide electoral campaign return or related documents — official agent — subsections 451(1), (2), (3) or (4)	(*u*)	500(1)	$1,000 fine, three month imprisonment, or both
▪ failure to comply with a requirement of the Chief Electoral Officer — official agent — subsection 451(2.2)	(*u*.1)	500(1)	$1,000 fine, three month imprisonment, or both
▪ failure to send declaration re electoral campaign return to agent — candidate — subsection 451(5)	(*v*)	500(1)	$1,000 fine, three month imprisonment, or both
▪ failure to pay value of undetermined contribution— official agent — section 452	(*w*)	500(1)	$1,000 fine, three month imprisonment, or both
▪ failure to provide updated electoral campaign return or related documents — official agent — section 455	(*x*)	500(1)	$1,000 fine, three month imprisonment, or both
▪ providing incomplete electoral campaign return — official agent — paragraph 463(1)(*b*)	(*y*)	500(1)	$1,000 fine, three month imprisonment, or both

	Offences	**Punishment***	**Maximum Penalty**
▪ failure to dispose of surplus electoral funds — official agent — subsection 472(2) or section 473	(*z*)	500(1)	$1,000 fine, three month imprisonment, or both
▪ improper or unauthorized transfer of contributions — registered agent or financial agent — section 476	497(1)(*z*.1)	500(1)	$1,000 fine, three month imprisonment, or both
▪ failure to return unused income tax receipts — official agent — subsection 478(2)	(*z*.2)	500(1)	$1,000 fine, three month imprisonment, or both
▪ failure to file a report of nomination contest — registered party or registered association — subsection 478.02(1)	(*z*.21)	500(1)	$1,000 fine, three month imprisonment, or both
▪ failure to appoint financial agent — nomination contestant — section 478.04	(*z*.22)	500(1)	$1,000 fine, three month imprisonment, or both
▪ failure to comply with requirements re: appointment of financial agent — nomination contestant — section 478.06, 478.07 or 478.08	(*z*.23)	500(1)	$1,000 fine, three month imprisonment, or both
▪ failure to report changes in nomination contestant information — nomination contestant — subsection 478.1(1) or (2)	(*z*.24)	500(1)	$1,000 fine, three month imprisonment, or both
▪ failure to satisfy bank account requirements — financial agent of a nomination contestant — section 478.12	(*z*.25)	500(1)	$1,000 fine, three month imprisonment, or both
▪ exceeding nomination campaign expenses limit — nomination contestant or the financial agent of one — subsection 478.15(1)	(*z*.26)	500(1)	$1,000 fine, three month imprisonment, or both
▪ failure to pay recoverable claim in timely manner — nomination contestant or financial agent of one — subsection 478.17(1)	(*z*.27)	500(1)	$1,000 fine, three month imprisonment, or both
▪ failure to provide nomination campaign return or related documents — financial agent of a nomination contestant — subsection 478.23(1), (2) or (6)	(*z*.28)	500(1)	$1,000 fine, three month imprisonment, or both

	Offences	Punishment*	Maximum Penalty
▪ failure to comply with a requirement of the Chief Electoral Officer — financial agent of a nomination contestant — subsection 478.23(4)	(*z*.29)	500(1)	$1,000 fine, three month imprisonment, or both
▪ failure to send declaration re: nomination campaign return to agent — nomination contestant — subsection 478.23(8)	497(1)(*z*.3)	500(1)	$1,000 fine, three month imprisonment, or both
▪ failure to forward undetermined contributions — financial agent of a nomination contestant — section 478.24	(*z*.31)	500(1)	$1,000 fine, three month imprisonment, or both
▪ failure to appoint auditor — nomination contestant — subsection 478.25(1)	(*z*.32)	500(1)	$1,000 fine, three month imprisonment, or both
▪ failure to comply with requirements re: appointment of auditor — nomination contestant — subsection 478.25(4) or (5) or section 478.26	(*z*.33)	500(1)	$1,000 fine, three month imprisonment, or both
▪ failure to provide updated financial reporting documents — financial agent of a nomination contestant — subsection 478.3(1) or (3)	(*z*.34)	500(1)	$1,000 fine, three month imprisonment, or both
▪ providing incomplete financial return — financial agent of a nomination contestant — paragraph 478.38(*b*)	(*z*.35)	500(1)	$1,000 fine, three month imprisonment, or both
▪ failure to dispose of surplus nomination campaign funds — financial agent of a nomination contestant — subsection 478.4(2) or section 478.41	(*z*.36)	500(1)	$1,000 fine, three month imprisonment, or both
▪ paying or incurring registered association's expenses while ineligible — person or entity other than an electoral district agent of a registered association (knowingly) — subsection 403.28(1) or (2)	(2)(*a*)	500(3)	$2,000 fine, six month imprisonment, or both
▪ accepting contributions while ineligible — not being an electoral district agent or a registered agent (knowingly) — subsection 403.28(3) or 416(3)	(*a*.1)	500(3)	$2,000 fine, six month imprisonment, or both

	Offences	Punishment*	Maximum Penalty
▪ accepting or making transfers while ineligible — not being the financial agent of a registered association (knowingly) — subsection 403.28(4)	(*a*.2)	500(3)	$2,000 fine, six month imprisonment, or both
▪ paying or incurring registered party's expenses — not chief agent, registered agent or person authorized under paragraph 446(*c*) (knowingly) — section 416	497(2)(*b*)	500(3)	$2,000 fine, six month imprisonment, or both
▪ failure to provide statement of assets and liabilities or related documents — registered party (wilfully) — section 372	(3)(*a*)	500(5)	$5,000 fine, five year imprisonment, or both
▪ ineligible person acting as chief agent, registered agent or auditor (wilfully) — subsection 381(1) or (2)	(*b*)	500(5)	$5,000 fine, five year imprisonment, or both
▪ failure to provide final transactions return or election expenses return or related documents — chief agent of a deregistered political party (wilfully) — section 392	(*c*)	500(5) 506	$5,000 fine, five year imprisonment, or both Deregistered party that offends this section is liable to $25,000 fine
▪ failure to provide financial transactions returns or related documents — chief agent of a merging registered party (wilfully) — section 403	(*f*)	500(5)	$5,000 fine, five year imprisonment, or both
▪ failure to register — electoral district association (wilfully) — section 403.01	(*f*.01)	500(5)	$5,000 fine, five year imprisonment, or both
▪ financial activity during an election period — electoral district association of a registered party (wilfully) — section 403.04	(*f*.02)	500(5)	$5,000 fine, five year imprisonment, or both
▪ failure to provide statement of assets and liabilities or related documents — registered association (wilfully) — section 403.05	(*f*.03)	500(5)	$5,000 fine, five year imprisonment, or both
▪ making erroneous declaration — financial agent of a registered association (knowingly) — section	(*f*.031)	500(5)	$5,000 fine, five year imprisonment, or both

	Offences	Punishment*	Maximum Penalty
403.051			
▪ failure to comply with requirements re: appointment of electoral district agent — registered association (wilfully) — subsection 403.09(2)	(*f*.04)	500(5)	$5,000 fine, five year imprisonment, or both
▪ acting as financial agent, electoral district agent or auditor when ineligible to do so — person (wilfully) — subsection 403.15(1) or (2)	497(3)(*f*.05)	500(5)	$5,000 fine, five year imprisonment, or both
▪ failure to provide financial transactions return for fiscal period or related documents — financial agent of a deregistered electoral district association (wilfully) — section 403.26	(*f*.06)	500(5)	$5,000 fine, five year imprisonment, or both
▪ failure to provide financial transactions return or related documents — financial agent of a registered association (wilfully) — subsection 403.35(1), (2) or (4)	(*f*.07)	500(5)	$5,000 fine, five year imprisonment, or both
▪ failure to forward undetermined contributions — financial agent of a registered association (wilfully) — section 403.36	(*f*.08)	500(5)	$5,000 fine, five year imprisonment, or both
▪ providing financial transactions return containing false or misleading information — financial agent of a registered association — paragraph 403.38(*a*)	(*f*.09)	500(5)	$5,000 fine, five year imprisonment, or both
▪ making contribution while ineligible — person or entity (knowingly) — subsection 404(1)	(*f*.1)	500(5)	$5,000 fine, five year imprisonment, or both
▪ making prohibited transfer — registered party or electoral district association of one (wilfully) — subsection 404.3(1)	(*f*.11)	500(5)	$5,000 fine, five year imprisonment, or both
▪ failure to issue receipt — person who is authorized to accept contributions on behalf of a registered party, a registered association, a candidate, a leadership contestant or a nomination contestant (wilfully) — section 404.4	(*f*.12)	500(5)	$5,000 fine, five year imprisonment, or both

	Offences	Punishment*	Maximum Penalty
▪ exceeding contribution limit — individual (wilfully) — subsection 405(1)	(*f*.13)	500(5)	$5,000 fine, five year imprisonment, or both
▪ circumventing contribution limit — person or entity (knowingly) — subsection 405.2(1)	(*f*.14)	500(5)	$5,000 fine, five year imprisonment, or both
▪ concealing source of contribution — person or entity (knowingly) — subsection 405.2(2)	497(3)(*f*.15)	500(5)	$5,000 fine, five year imprisonment, or both
▪ knowingly accepting excessive contribution — person entitled to accept contributions under this Act — subsection 405.2(3)	(*f*.16)	500(5)	$5,000 fine, five year imprisonment, or both
▪ entering prohibited agreement — person or entity (knowingly) — subsection 405.2(4)	(*f*.161)	500(5)	$5,000 fine, five year imprisonment, or both
▪ making contribution from others' contributions — person or entity (wilfully) — subsection 405.3(1)	(*f*.17)	500(5)	$5,000 fine, five year imprisonment, or both
▪ knowingly making a false or misleading declaration — individual — subsection 405.3(5)	(*f*.18)	500(5)	$5,000 fine, five year imprisonment, or both
▪ failure to return or pay amount of contribution — person authorized under this Act to accept contributions (wilfully) — section 405.4	(*f*.19)	500(5)	$5,000 fine, five year imprisonment, or both
▪ exceeding election expense limit — chief agent (wilfully) — subsection 423(1)	(*g*)	500(5)	$5,000 fine, five year imprisonment, or both
		507	Registered party that offends this section is liable to $25,000 fine
▪ colluding to circumvent election expense limit — registered party or third party (knowingly) — subsection 423(2)	(*h*)	500(5)	$5,000 fine, five year imprisonment, or both
▪ failure to provide financial transactions return or related documents — chief agent (wilfully) — section 424	(*i*)	500(5)	$5,000 fine, five year imprisonment, or both
		507	Registered party that offends this section is liable to $25,000 fine
▪ failure to provide quarterly return —	(*i*.1)	500(5)	$5,000 fine, five year imprisonment, or both

	Offences	Punishment*	Maximum Penalty
chief agent (wilfully) — section 424.1			
▪ failure to forward undetermined contributions — registered agent (wilfully) — section 425	(*j*)	500(5) 507	$5,000 fine, five year imprisonment, or both Registered party that offends this section is liable to $25,000 fine
▪ providing financial transactions return containing false or misleading statement — chief agent — paragraph 427(*a*)	497(3)(*k*)	500(5)	$5,000 fine, five year imprisonment, or both
▪ failure to provide election expenses return or related documents — chief agent (wilfully) — section 429	(*m*)(i)	500(5) 507	$5,000 fine, five year imprisonment, or both Registered party that offends this section is liable to $25,000 fine
▪ providing election expenses return containing false or misleading statement — chief agent — paragraph 431(*a*)	(*m*)(ii)	500(5) 507	$5,000 fine, five year imprisonment, or both Registered party that offends this section is liable to $25,000 fine
▪ failure to inform of leadership contest or related changes — registered party (wilfully) — subsection 435.04(1) or (2)	(*m*.01)	500(5)	$5,000 fine, five year imprisonment, or both
▪ failure to register for a leadership contest — person (wilfully) — subsection 435.05(1)	(*m*.02)	500(5)	$5,000 fine, five year imprisonment, or both
▪ acting as financial agent, leadership campaign agent or auditor of a leadership contestant when ineligible to do so — person (wilfully) — subsection 435.14(1) or (2)	(*m*.03)	500(5)	$5,000 fine, five year imprisonment, or both
▪ failure to file statement of withdrawal — leadership contestant (wilfully) — section 435.16	(*m*.04)	500(5)	$5,000 fine, five year imprisonment, or both
▪ failure to file statement of withdrawal of acceptance — registered party (wilfully) — section 435.17	(*m*.05)	500(5)	$5,000 fine, five year imprisonment, or both
▪ acceptance of contribution while ineligible — person other than a leadership campaign agent (knowingly) — subsection 435.22(1)	(*m*.06)	500(5)	$5,000 fine, five year imprisonment, or both
▪ accepting prohibited contribution —	(*m*.07)	500(5)	$5,000 fine, five year imprisonment, or both

	Offences	Punishment*	Maximum Penalty
leadership campaign agent (knowingly) — subsection 435.22(2)			
■ paying or incurring expenses for specified purposes while ineligible — person or entity (knowingly) — subsection 435.22(3) or (4)	(*m*.08)	500(5)	$5,000 fine, five year imprisonment, or both
■ paying personal expenses of leadership contestant while ineligible — person (knowingly) — subsection 435.22(5)	497(3)(*m*.09)	500(5)	$5,000 fine, five year imprisonment, or both
■ failure to provide leadership campaign return or related documents — financial agent of a leadership contestant (wilfully) — subsection 435.3(1), (2) or (6)	(*m*.1)	500(5)	$5,000 fine, five year imprisonment, or both
■ failure to comply with a requirement of the Chief Electoral Officer — financial agent of a leadership contestant (wilfully) — subsection 435.3(4)	(*m*.11)	500(5)	$5,000 fine, five year imprisonment, or both
■ failure to send declaration re: leadership campaign return to agent — leadership contestant (wilfully) — subsection 435.3(7)	(*m*.12)	500(5)	$5,000 fine, five year imprisonment, or both
■ failure to provide return on contributions or related documents — financial agent of a leadership contestant (wilfully) — subsections 435.31(1) to (3)	(*m*.13)	500(5)	$5,000 fine, five year imprisonment, or both
■ failure to forward undetermined contributions — financial agent of a leadership contestant (wilfully) — section 435.32	(*m*.14)	500(5)	$5,000 fine, five year imprisonment, or both
■ failure to provide updated financial reporting documents — financial agent of a leadership contestant (wilfully) — subsection 435.35(1) or (3)	(*m*.15)	500(5)	$5,000 fine, five year imprisonment, or both
■ providing document containing false or misleading information or that is substantially incomplete — leadership contestant or the financial agent of one — paragraph 435.43(*a*) or (knowingly)	(*m*.16)	500(5)	$5,000 fine, five year imprisonment, or both

	Offences	Punishment*	Maximum Penalty
paragraph 435.43(*b*)			
▪ failure to dispose of surplus leadership campaign funds — financial agent of a leadership contestant (wilfully) — subsection 435.45(2) or section 435.46	(*m*.17)	500(5)	$5,000 fine, five year imprisonment, or both
▪ accepting or issuing receipts for contributions — person other than official agent — subsection 438(2) or (3)	497(3) (*n*)	500(5)	$5,000 fine, five year imprisonment, or both
▪ paying or incurring electoral campaign expenses — person or entity, other than candidate, official agent or person authorized under paragraph 446(*c*) — subsection 438(4) or (5)	(*n*)	500(5)	$5,000 fine, five year imprisonment, or both
▪ paying candidate's personal expenses — person other than candidate or official agent — subsection 438(6)	(*n*)	500(5)	$5,000 fine, five year imprisonment, or both
▪ spending more than maximum allowed for notice of nomination meetings — candidate, official agent or person authorized under paragraph 446(*c*) (wilfully) — subsection 439(2)	(*o*)	500(5)	$5,000 fine, five year imprisonment, or both
▪ exceeding election expenses limit — official agent, candidate or person authorized under paragraph 446(*c*) (wilfully) — subsection 443(1)	(*p*)	500(5) 502(1)(*c*)	$5,000 fine, five year imprisonment, or both
▪ colluding to circumvent election expenses limit — official agent, candidate, person authorized under paragraph 446(*c*) or third party — subsection 443(2)	(*q*)	500(5) 502(1)(*c*)	$5,000 fine, five year imprisonment, or both
▪ failure to provide electoral campaign return or related documents — official agent (wilfully) — subsections 451(1) to (4)	(*r*)	500(5)	$5,000 fine, five year imprisonment, or both
▪ failure to comply with a requirement of the Chief Electoral Officer — official agent (wilfully) — subsection 451(2.2)	(*r*.1)	500(5)	$5,000 fine, five year imprisonment, or both

	Offences	Punishment*	Maximum Penalty
▪ failure to send electoral campaign expense declaration — candidate (wilfully) — subsection 451(5)	(*s*)	500(5)	$5,000 fine, five year imprisonment, or both
▪ failure to pay value of undetermined contribution — official agent (wilfully) — section 452	(*t*)	500(5)	$5,000 fine, five year imprisonment, or both
▪ failure to provide updated electoral campaign return or related documents — official agent (wilfully) — section 455	497(3)(*u*)	500(5)	$5,000 fine, five year imprisonment, or both
▪ providing electoral campaign return containing false or misleading statement or one that is incomplete — official agent (knowingly) — paragraph 463(1)(*a*) or paragraph 463(1)(*b*)	(*v*)	500(5)	$5,000 fine, five year imprisonment, or both
▪ failure to dispose of surplus electoral funds — official agent (wilfully) — subsection 472(2) or section 473	(*w*)	500(5)	$5,000 fine, five year imprisonment, or both
▪ unauthorized or improper transfer of contributions — registered agent, financial agent or official agent (knowingly) — section 476	(*x*)	500(5)	$5,000 fine, five year imprisonment, or both
▪ failure to file a report of nomination contest — registered party or registered association (knowingly) — subsection 478.02(1)	(*y*)	500(5)	$5,000 fine, five year imprisonment, or both
▪ acting as financial agent of nomination candidate when ineligible to do so — person (wilfully) — section 478.09	(*z*)	500(5)	$5,000 fine, five year imprisonment, or both
▪ acceptance of contribution while ineligible — person other than the financial agent of a nomination contestant (knowingly) — subsection 478.13(1)	(*z*.01)	500(5)	$5,000 fine, five year imprisonment, or both
▪ accepting prohibited contribution — financial agent of a nomination contestant (knowingly) — subsection 478.13(2)	(*z*.02)	500(5)	$5,000 fine, five year imprisonment, or both
▪ paying or incurring nomination	(*z*.03)	500(5)	$5,000 fine, five year imprisonment, or both

	Offences	Punishment*	Maximum Penalty
campaign expenses or paying personal expenses while ineligible — person or entity (knowingly) — subsection 478.13(3), (4) or (5)			
▪ exceeding nomination campaign expenses limit — nomination contestant or the financial agent of one (wilfully) — subsection 478.15(1)	(z.04)	500(5)	$5,000 fine, five year imprisonment, or both
▪ circumventing nomination campaign expenses limit — person or entity — subsection 478.15(2)	497(3)(z.05)	500(5)	$5,000 fine, five year imprisonment, or both
▪ failure to provide nomination campaign return or related documents — financial agent of a nomination contestant (wilfully) — subsection 478.23(1), (2) or (6)	(z.06)	500(5)	$5,000 fine, five year imprisonment, or both
▪ failure to comply with a requirement of the Chief Electoral Officer — financial agent of a nomination contestant (wilfully) — subsection 478.23(4)	(z.07)	500(5)	$5,000 fine, five year imprisonment, or both
▪ failure to send declaration re: nomination campaign return to agent — nomination contestant (wilfully) — subsection 478.23(8)	(z.08)	500(5)	$5,000 fine, five year imprisonment, or both
▪ failure to forward undetermined contributions — financial agent of a nomination contestant (wilfully) — section 478.24	(z.09)	500(5)	$5,000 fine, five year imprisonment, or both
▪ acting as auditor of a nomination contestant when ineligible to do so — person (wilfully) — section 478.27	(z.1)	500(5)	$5,000 fine, five year imprisonment, or both
▪ failure to provide updated financial reporting documents — financial agent of a nomination contestant (wilfully) — subsection 478.3(1) or (3)	(z.11)	500(5)	$5,000 fine, five year imprisonment, or both
▪ providing document containing false or misleading information or that is substantially incomplete — nomination contestant or the financial agent of one — paragraph 478.38(*a*) or (knowingly) paragraph 478.38(*b*)	(z.12)	500(5)	$5,000 fine, five year imprisonment, or both

	Offences	Punishment*	Maximum Penalty
▪ failure to dispose of surplus nomination campaign funds — financial agent of a nomination contestant (wilfully) — subsection 478.4(2) or section 478.41	(*z*.13)	500(5)	$5,000 fine, five year imprisonment, or both
Enforcement — Offence under this Part			
▪ refusal to obey order to leave polling place (wilfully) — subsection 479(4)	498	500(5)	$5,000 fine, five year imprisonment, or both
General — Offences under Part 21			
▪ removal of posted election documents — subsection 548(1)	499(1)	500(1)	$1,000 fine, three month imprisonment, or both
▪ taking false oath — subsection 549(3)	(2)(*a*)	500(5) 502(1)(*e*)	$5,000 fine, five year imprisonment, or both
▪ compelling or inducing false oath (knowingly) — subsection 549(4)	(*a*)	500(5) 502(1)(*e*)	$5,000 fine, five year imprisonment, or both
▪ signing document that limits freedom of action in Parliament — candidate (knowingly) — section 550	(*b*)	500(5) 502(1)(*f*)	$5,000 fine, five year imprisonment, or both
Illegal practices			
▪ publication of false statement of withdrawal of candidate — candidate or official agent — section 92	502(1)(*a*)	502(3)	Five year ban on being elected to House of Commons and on holding office in the nomination of Crown or Governor in Council
▪ foreign broadcasting — candidate or official agent — subsection 330(2)	(*b*)	502(3)	Five year ban on being elected to House of Commons and on holding office in the nomination of Crown or Governor in Council
▪ exceeding election expenses limit — official agent, candidate or person authorized under paragraph 446(*c*) (wilfully) — section 443	(*c*)	502(3)	Five year ban on being elected to House of Commons and on holding office in the nomination of Crown or Governor in Council
▪ obstructing electoral process — candidate or official agent — section 480	(*d*)	502(3)	Five year ban on being elected to House of Commons and on holding office in the nomination of Crown or Governor in Council

	Offences	Punishment*	Maximum Penalty
▪ taking false oath — candidate — subsection 549(3)	(*e*)	502(3)	Five year ban on being elected to House of Commons and on holding office in the nomination of Crown or Governor in Council
▪ compelling or inducing false oath — subsection 549(4)	(*e*)	502(3)	Five year ban on being elected to House of Commons and on holding office in the nomination of Crown or Governor in Council
▪ signing of document that limits freedom of action in Parliament — candidate — section 550	502(1)(*f*)	502(3)	Five year ban on being elected to House of Commons and on holding office in the nomination of Crown or Governor in Council
Corrupt practices			
▪ voting more than once — candidate or official agent — section 7	(2)(*a*)	502(3)	Seven year ban on being elected to House of Commons and on holding office in the nomination of Crown or Governor in Council
▪ obstruction of election officer — candidate or official agent — paragraph 43(*a*)	(*b*)	502(3)	Seven year ban on being elected to House of Commons and on holding office in the nomination of Crown or Governor in Council
▪ impersonation of revising agent — candidate or official agent (wilfully) — paragraph 43(*b*)	(*c*)	502(3)	Seven year ban on being elected to House of Commons and on holding office in the nomination of Crown or Governor in Council
▪ making false statement to have person deleted from Register of Electors — candidate or official agent — paragraph 56(*b*)	(*d*)	502(3)	Seven year ban on being elected to House of Commons and on holding office in the nomination of Crown or Governor in Council
▪ forbidden acts re Register of Electors — candidate or official agent — paragraph 56(*c*) or (*d*)	(*e*)	502(3)	Seven year ban on being elected to House of Commons and on holding office in the nomination of Crown or Governor in Council
▪ signing of nomination paper when ineligible — section 89	(*f*)	502(3)	Seven year ban on being elected to House of Commons and on holding office in the nomination of Crown or Governor in Council
▪ forbidden acts re list of electors — paragraph 111(*a*), (*d*) or (*e*)	(*g*)	502(3)	Seven year ban on being elected to House of Commons and on holding office in the nomination of Crown or Governor in Council
▪ apply for a ballot under false name — paragraph 167(1)(*a*)	(*h*)	502(3)	Seven year ban on being elected to House of Commons and on holding office in the nomination of Crown or Governor in Council
▪ offering bribe — candidate or official	(*i*)	502(3)	Seven year ban on being elected to House of

	Offences	Punishment*	Maximum Penalty
agent — subsection 481(1)			Commons and on holding office in the nomination of Crown or Governor in Council

Elections Canada

CHAPTER 5

DIRECTION AND CONTROL OF INVESTIGATION

Commissioner of Canada Elections

January 2004

DIRECTION AND CONTROL OF INVESTIGATION

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1. INTRODUCTION

This chapter provides direction, general information and guidance to Investigators on matters related to the conduct, management and control of the investigation of offences under the *Acts*.[1]

2. DEFINITION

An investigation is a means to determine whether complaints and other allegations are founded and if the evidence warrants entering into compliance agreements, requires applying for an injunction or supports a possible prosecution.

3. POLICY

The conduct, management and control of investigations must be in compliance with operational policies, goals and priorities, keeping in mind the duty to act fairly, the public interest and the promotion of the integrity of the electoral process.

4. INVESTIGATIVE APPROACHES

The Commissioner of Canada Elections (the Commissioner) has the sole authority to decide whether to investigate, to enter into compliance agreements, to apply for an injunction or to prosecute offences under the *Acts*. The Commissioner retains the services of Investigators[2] across the country and other investigative resources in Ottawa in order to respond promptly to matters, which are brought to his attention.

The Commissioner may also, in certain circumstances, request the Royal Canadian Mounted Police (RCMP) to participate in a joint investigation. The RCMP's assistance could also be requested where it has primary enforcement jurisdiction and where peace officers[3] may be required for the execution of warrants and the performance of all related duties and services in relation to the enforcement of the *Acts*. Cases investigated by the RCMP are managed and controlled by the RCMP.

The RCMP investigated most complaints on behalf of the Commissioner up to the 1993 general election. At that time, it was alleged that the involvement of the RCMP created the perception that a very serious criminal offence had been committed, "*which meant that being the subject of a police investigation has a direct repercussion on the reputation of the person concerned*".[4]

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[1] For the purpose of this manual, "*Acts*" include the *Canada Elections Act* and the *Referendum Act*.

[2] Refer to Chapter 2 – *Qualifications, duties and responsibilities of Investigators*, for more information on the distinction between the powers of "peace officers" and those of Investigators.

[3] See section 2 of the *Criminal Code* for the interpretation of the definition of "peace officer".

Instead of using Investigators to investigate breaches of the *Acts*,[5] complaints that require the expertise and powers of a "peace officer" may be referred to the RCMP. The Commissioner's decision concerning respective investigative approaches depends largely on the results of the preliminary assessment of the alleged infractions,[6] the allegations raised, the report on the standards and factors considered under the investigation policy[7] and the assessment report of investigation findings.[8]

5. ROLE OF SENIOR COUNSEL TO THE COMMISSIONER

Where the Commissioner refers an investigation to the RCMP, Senior Counsel to the Commissioner is responsible for liaising with the Officer in Charge, within Criminal Operations, Economic Crime Directorate. The Chief Investigator provides assistance in the monitoring of the status of investigative files referred to the RCMP.

6. ROLE OF THE CHIEF INVESTIGATOR

The Chief Investigator acts as an agent of the Commissioner in the management of investigative resources retained by the Commissioner. Under the general supervision of Senior Counsel to the Commissioner, the Chief Investigator is responsible for the planning, organisation, execution, co-ordination and monitoring of the investigative process within the Commissioner's Office.

7. WORK ASSIGNMENT INSTRUCTIONS

Where the Commissioner is satisfied that an alleged offence warrants an investigation, the Chief Investigator is responsible for the preparation of the work assignment letter containing the necessary information and instructions described hereunder. The main elements of a work assignment letter are as follows:

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[4] See page 507, *Democratic Rights and Electoral Reform. Volume 10 of the Research Studies. Royal Commission of the Electoral Reform and Party Financing, Ottawa 1991.*

[5] Support for the need of a more discretionary investigative approach is documented. See page 488. *Reforming Electoral Democracy. Volume 1. Final Report. Royal Commission on Electoral Reform and Party Financing. Ottawa 1991.*

[6] Refer to Chapter 3 – *Preliminary assessment of alleged infractions*, for more information on this activity.

[7] Refer to section 6 of Chapter 4 – *Investigation policy*, for more information on this matter.

[8] Refer to Chapter 14 – *Assessment of investigation findings*, for more information on this activity.

a) the name and address of the Investigator selected for the assignment and the respective responsibilities of any other participant, when applicable;

b) all relevant documentation including a photocopy of the letter from the complainant, audit files[9] referred by Election Financing Directorate, the physical evidence and record provided by the complainant;

c) a summary of the results of the preliminary assessment of the complaint[10] and the assessment of any investigation findings[11] including the relevant investigation reports, together with the necessary election documents[12] and any other record related to the alleged offence;

d) confirmation of the Commissioner's approval to investigate the specific alleged offence, including the investigation focus, scope, phase and extent of the investigation authorized, and copies of all relevant documentation and directives published by Elections Canada to assist in understanding the law;

e) the name of all individuals involved, including any Election Officers,[13] whether involved as a potential witness,[14] potential source of information or suspect;[15]

f) the steps, goals and objectives of the investigation, the specific evidence and information, which is required from the interview, and any other avenues of investigation to support entering into a compliance agreement, to apply for an injunction or to prove beyond any reasonable doubt the commission of an offence and by whom;

g) whether any official caution[16] must be read to any individual prior to accepting any information from that person and requesting access to records held by any individual;[17]

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[9] Refer to Chapter 6 – *Election financing*, for more information about this matter.

[10] Supra, footnote 6.

[11] Supra, footnote 8.

[12] See section 2 of the *Canada Elections Act* for the definition of "election documents".

[13] See subsection 22(1) of the *Canada Elections Act* for the definition of "election officers".

[14] Refer to Chapter 7 – *Official cautions*, for the definition of "witness".

[15] Refer to Chapter 7 – *Official cautions*, for more information on the definition of "suspect" and the protection of the rights of individuals.

[16] Supra, footnote 15.

[17] Refer to Chapter 8 – *Access to records, books and documents*, for more information on the procedures to follow.

h) whether any information may be disclosed to anyone or exchanged[18] with local RCMP officers and other law enforcement personnel during the course of the investigation;

i) the priority of the investigation, the expected time frame for completion of the investigation and whether any interim reporting of developments is necessary.

8. WORK ASSIGNMENT REVIEW BY INVESTIGATORS

Upon receipt of the work assignment instructions, Investigators must review the material and take all the necessary time to study the instructions received. They are also expected to acquire an understanding of all relevant sections of the Statutes, which are germane to the assignment. This includes reviewing and studying the obligations, role and responsibilities of the individual concerned whether it is a candidate,[19] an official agent,[20] an Election Officer[21] or any other person involved in the electoral process. If any legal interpretation is required, they should consult with Senior Counsel to the Commissioner or the Commissioner.

Prior to beginning the investigation, Investigators are expected to use their initiative, investigative experience and professional skills in a thorough methodological preparation of their work. This includes reviewing the applicable legal requirements and developing the necessary understanding of applicable policies and procedures contained in this manual. They are also responsible for planning and organizing their work so as to ensure optimal efficiency, efficacy and economy. Should any assistance or clarification be required at any time, Investigators should contact by phone or fax the Chief Investigator, Senior Counsel to the Commissioner or the Commissioner.

9. MONITORING AND SUPERVISING AN INVESTIGATION

With the assistance of assistants, as may be required, the Chief Investigator monitors, on an on call basis, the work of Investigators; in particular, the Chief Investigator is responsible for the following:[22]

a) setting and reviewing investigation priorities;

b) providing leadership, guidance and co-ordinating the work flow;

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[18] Refer to Chapter 21 – *Relations with law enforcement agencies*, for more information on this matter.

[19] See sections 82 to 88 of the *Canada Elections Act*.

[20] See sections 436 to 438 of the *Canada Elections Act*.

[21] See subsection 22(1) of the *Canada Elections Act* for the definition of "Election Officer".

[22] Refer to Chapter 1 – *The statutory framework*, for more information on the role of the Chief Investigator.

c) ensuring timely investigation reporting and compliance with operational policies and procedures;

d) reviewing and assessing ongoing developments and progress of investigations;

e) providing timely oral and written advice and recommendations to Senior Counsel to the Commissioner and the Commissioner on the status of investigations, operational expenditures[23] and matters requiring their attention.

10. CONDUCT OF INVESTIGATION

Investigators are responsible for conducting and completing investigations within the policy framework, seeking assistance or guidance where necessary, reporting findings[24] and concerns in a timely fashion to the Office of the Commissioner.

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[23] Refer to Chapter 25 – *Professional fees and disbursements*, for more information on this activity.

[24] Refer to Chapter 12 – *Investigation report format*, for the essential requirements.

Elections Canada

CHAPTER 6

ELECTION FINANCING

Commissioner of Canada Elections

January 2004

ELECTION FINANCING

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1. INTRODUCTION

This chapter provides general information, direction and guidance to Investigators on their role and responsibilities in handling election financing non-compliance files relating to the provisions of the *Canada Elections Act* and the *Referendum Act*. This chapter addresses the respective roles and responsibilities of various Elections Canada staff members in the assessment of factors that will assist the Commissioner in choosing the appropriate course of action.

2. POLICY

It is the Commissioner's responsibility to ensure that the provisions of the *Acts* are complied with and enforced[1]; this includes conducting investigations for alleged offences, entering into compliance agreements, seeking injunctions and initiating prosecutions. Where the Election Financing Directorate identifies in its audit process files containing potential offences under the *Acts*,[2] the Senior Director, Election Financing and Corporate Services, immediately refers the matters to the Commissioner of Canada Elections.

3. ELECTION FINANCING

3.1 The administration of the finance provisions of the Acts

The Senior Director, Election Financing and Corporate Services, is responsible for the internal financial affairs of the organization and financial matters regarding individuals and entities involved in the conduct of elections and referenda. Senior Director also ensures that the appropriate administrative requirements, policies, systems, procedures and practices are in place to properly record, verify, audit and report information[3] concerning compliance with the financial provisions of the *Acts*, by political parties,[4] third parties,[5] candidates[6], referendum committees[7], electoral district associations[8], leadership contestants[9] and nomination contestants[10]. The administration of the finance provisions of the *Acts* includes providing information regarding receipts for contributions to candidates, registered parties, provincial divisions of registered parties or registered associations, for the purposes of the *Income Tax Act.*

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[1] See section 509 of the *Canada Elections Act*.

[2] For the purposes of this manual, "*Acts*" include the *Canada Elections Act* and the *Referendum Act*.

[3] *The Audits of Candidates' Returns by Elections Canada*, Lindquist, Avey, Macdonald, Baskerville Inc., April 25, 1994.

[4] "*Political party*" is not defined in the *Canada Elections Act*, but "*registered party*" is defined in section 2 as follows: "*means a political party that is entered in the registry of parties referred to in section 374 as a registered party.*"

To ensure that all stakeholders, including candidates, official agents, auditors and registered political parties and their local associations understand their duties and responsibilities, Elections Canada publishes handbooks designed to help those involved in electoral campaigns to comply with the provisions of the Act.[11] Seminars are also offered by the Election Financing Directorate and a 1-800 support line is available to answer any questions.

3.2 The audit process

The Election Financing Directorate discharges its responsibilities under the *Canada Elections Act* and the *Financial Administration Act*[12] (*FAA*) through an audit process. These audit activities include such matters as payments and reimbursements from the Consolidated Revenue Fund and information concerning receipts for contributions to candidates, registered parties, provincial divisions of registered parties and registered associations for the purposes of the *Income Tax Act*.

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[5] "*Third party*" is defined in section 349 of the *Canada Elections Act* as follows: "*means a person or a group, other than a candidate, registered party or electoral district association of a registered party.*" The provisions of the Act requiring third parties to register and to report on their election advertising, as well as the spending limits, were ruled unconstitutional by the Alberta Court of Appeal in *Harper v. A.G. (Canada)* (2002) 223 D.L.R. (4th) 275 (Alta C.A.). On September 4, 2003, the Supreme Court of Canada granted leave to appeal the decision of the Alberta Court of Appeal.

[6] "*Candidate*" is defined in section 2 of the *Canada Elections Act* as follows: "*means a person whose nomination as a candidate at an election has been confirmed under subsection 71(1) and who, or whose official agent, has not complied with sections 451 to 463 and 471 to 475 in respect of that election.*"

[7] "*Referendum committee*" is defined in section 2 of the Referendum Act as follows: "*means any person who, or group that, intends to incur referendum expenses over five thousand dollars*".

[8] "*Electoral district association*" is defined in section 2 of the *Canada Elections Act* as follows: "means an association of members of a political party in an electoral district".

[9] "*Leadership contestant*" is defined at section 2 of the *Canada Elections Act* as follows: " means a person who has been registered in the registry of leadership contestants referred to in section 435.07 and who, or whose financial agent, has not yet complied with sections 435.3 to 435.47 in respect of that leadership contest".

[10] "*Nomination contestant*" is defined at section 2 of the *Canada Elections Act* as follows: "means a person named as a nomination contestant in a nomination contest report filed in accordance with paragraph 478.02(1)(*c*) who, or whose financial agent, has not yet complied with section 478.23 to 478.42 in respect of that nomination contest".

[11] Handbooks targeting groups of stakeholders, including: candidates, political parties, official agents, auditors, nomination and leadership contestants and registered electoral district associations.

[12] *Financial Administration Act*, R. S. 1985, Chap. F-11.

The electoral and financial performance of a candidate or of a party and compliance with reporting requirements under the *Canada Elections Act* determine eligibility for certain disbursements from, or obligation to make a payment to the Consolidated Revenue Fund. For example, the Chief Electoral Officer may reimburse candidates for their deposits providing each candidate's official agent has submitted the candidate's return, the auditor's report, documents evidencing expenses set out in the return, the requisite declarations and the unused official income tax receipts.[13]

3.3 Election financing audit activities

To ensure the information provided complies with the statutory requirements of the *Acts* and the *FAA*, the audit process consists of the review and analysis of financial returns and reports including but not limited to the following:

a) third parties' election advertising reports;[14]

b) candidates' electoral campaign expenses and financial returns, bank statements, deposit slips, cancelled cheques, auditors' reports and declarations;[15]

c) registered parties' or referendum committees' statements of expenses, financial transactions, auditors' reports and declarations;[16]

d) registered associations' returns on financial transactions[17];

e) leadership contestants' financial returns on the leadership campaign[18]; and,

f) nomination contestants' return on the nomination campaign[19].

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[13] See section 478 of the *Canada Elections Act*.

[14] See section 359 of the *Canada Elections Act*. *Supra*, footnote 5.

[15] See sections 451 and 453 of the *Canada Elections Act*

[16] See sections 424 and 426 of the *Canada Elections Act* and section ____ of the *Referendum Act*.

[17] See section 403.35 of the *Canada Elections Act*, as adopted in Bill C-24 in June 2003, which came into force on January 1, 2004.

[18] See section 435.3 of the *Canada Elections Act*, as adopted in Bill C-24 in June 2003, which came into force on January 1, 2004.

[19] See section 478.23 of the *Canada Elections Act*, as adopted in Bill C-24 in June 2003, which came into force on January 1, 2004.

3.4 Compliance with statutory requirements

The audit program verifies that activities, such as those listed below as examples, meet the statutory requirements of the *Acts*:

a) the Chief Electoral Officer's issuance of a certificate[20] for the reimbursement of election expenses and personal expenses of a candidate;

b) the Receiver General's subsidy of candidates' audit fees;[21]

c) the reimbursement of candidates' nomination deposits;[22]

d) candidates, third parties and political parties respecting spending limits;[23]

e) the assessment of the candidates' surplus of electoral funds and the disposal of the surplus;[24]

f) the official agents' compliance with banking provisions;[25]

g) the requirements to submit auditors reports;[26]

h) the Chief Electoral Officer's approval of late claims or payments by registered parties or registered agents;[27]

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[20] See section 464 of the *Canada Elections Act*.

[21] See section 467 of the *Canada Elections Act*.

[22] See section 468 of the *Canada Elections Act*.

[23] See sections 440 to 443 of the *Canada Elections Act*. In the case of spending limits for third parties, at the time of writing, the Alberta Court of Appeal had struck down the *Canada Elections Act*'s provisions as being unconstitutional in *Harper* v. *A.G. (Canada)*, *supra*, footnote 5; on September 4, 2003, the Supreme Court of Canada granted leave to appeal the decision of the Alberta Court of Appeal.

[24] See sections 472 to 474 of the *Canada Elections Act*. On June 27, 2003, the Supreme Court of Canada struck down the differential treatment provided to registered and non-registered political parties with respect to disposal of the surplus of electoral funds. The government is expected to introduce legislation within the next year to correct the unconstitutionality of these provisions, as defined by the Supreme Court in *Figueroa* v. *Canada (A.G.)*, (2003) 227 D.L.R. (4th) 1 (SCC).

[25] See section 437 of the *Canada Elections Act*.

[26] See section 424 of the *Canada Elections Act*.

[27] See section 419 of the *Canada Elections Act*.

3.5 File transfer to Commissioner's Office

Where a file is transferred from the Election Financing Directorate to the Commissioner's Office, it includes all available detail of the alleged offence and the time of the commission of the offence.[28] This transfer will also include all available documents, any legal interpretations from the Legal Services Directorate and the result of administrative measures taken pursuant to the *Acts*, including oral and written external communications with other persons by Election Financing Directorate auditors.

3.6 Forensic audit

Where the Commissioner requires a forensic audit to be performed, Senior Counsel to the Commissioner provides the Senior Director, Election Financing and Corporate Services with the scope of the audit and timeframes within which the audit is to be completed. In turn, the Senior Director, Election Financing and Corporate Services, assigns appropriate resources such as an Election Financing Auditor, who could be an employee or a consultant, or a forensic auditor to work with the Investigator responsible for the investigation.

3.7 Powers of the CEO

The Chief Electoral Officer (CEO) may approve minor corrections to a financial return, where such corrections do not materially affect the substance of a return.[29] The CEO may also authorise late claims or payments,[30] the correction of certain documents, or the extension of the timeframe for filing such documents.[31] These files are referred to the Commissioner at the expiration of the period within which the application for correction, late payment or extension was made.[32]

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[28] See section 514 of the *Canada Elections Act*.

[29] See sections 432 (registered parties) and 457 (candidates) of the *Canada Elections Act*. Amendments adopted in Bill C-24 provide for the same discretion for the CEO with respect to registered associations (new s. 403.4); leadership contestants (new s. 435.37) and nomination contestants (new s. 478.32).

[30] See section 447 of the *Canada Elections Act*. Amendments adopted in Bill C-24 provide for the same discretion for the CEO with respect to registered associations (new s. 403.31); leadership contestants (new s. 435.26) and nomination contestants (new s. 478.19).

[31] See section 458 of the *Canada Elections Act*. Amendments adopted in Bill C-24 provide for the same discretion for the CEO with respect to registered associations (new s. 403.41), leadership contestants (new s. 435.38) and nomination contestants (new s. 478.33).

[32] See subsection 497(4) of the *Canada Elections Act*. Note: Section 497(4) was replaced in Bill C-24 and provides as follows: " No proceedings may be commenced with respect to a failure to provide a return or other document to the Chief Electoral Officer before the expiration of the period within which an application may be made under this Act for an extension of the period within which that return or document is to be provided."

4. PROCEDURAL SAFEGUARDS

A clear distinction must be made between an audit, which is administrative in nature, and an investigation.[33] An investigation may lead to the laying of an information before the Courts and the Courts have ruled that individuals are entitled to the appropriate common law and protection under the *Canadian Charter of Rights and Freedoms* available to someone suspected of a criminal offence.[34]

As a necessary part of the audit process, Election Financing Directorate auditors have extensive communication, at times, with candidates, official agents and auditors. Actions taken during an audit do not necessarily suggest an offence under the *Acts* has taken place. Some actions are administrative in nature and do not require, for example, the administration of an official caution,[35] a measure aimed at formally advising suspects of their rights against self incrimination. Nevertheless, the administrative audit can, at some point, become similar to an investigation. At that point, the audit can become an investigation, where an adversarial relationship arises. The recent decision of the Supreme Court in *Jarvis* provides a useful discussion on when such a context exists, and when an individual should be considered to be under investigation and thereby protected by constitutional rights.[36]

When enforcing the *Acts*, however, the Commissioner must respect all safeguards available to an individual under the law, including the rights protected under the *Canadian Charter of Rights and Freedoms*. It is imperative that Election Financing Directorate auditors and Investigators working with them during an inquiry for the Commissioner, clearly state to a suspect that they are carrying out an investigation. Similarly, it may become imperative for the Investigator to administer an official caution to suspects and advise them that there are reasons to believe that they may have committed one or more offences under the *Acts*.

It is also important to note that Election Financing Directorate auditors may be considered persons in authority when providing assistance to Investigators or carrying out investigatory procedures. In such circumstances, the prosecution may have to demonstrate that any information or evidence given to them, as persons in authority, was given voluntarily and not under duress.

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[33] See the decision of the Supreme Court of Canada in *Jarvis* v. *R.* [2002] SCC 73, for discussion on what separates an administrative audit from an investigation, *i.e.*, the existence of an adversarial relationship.

[34] *Hunter* v. *Southam* (1984), 14 C.C.C. (3d) 97 (S.C.C.).

[35] Refer to Chapter 7 – *Official cautions*, and Chapter 8 – *Access to records, books and documents*, for more information on the necessary requirements.

[36] *Supra*, footnote 33.

4.1 Production of documents

The production of financial returns and reports[37] serves to maintain the integrity and transparency of the electoral process. To ensure compliance, the *Acts* require the production of supporting financial documents, which confirm the content of the returns and reports verified by the Election Financing Directorate. These documents include auditors' statements, bank statements, deposit slips and cancelled cheques.

Where, during the course of an investigation by the Commissioner's Office, additional financial information in the suspect's possession is required, other than what must be disclosed under the *Acts*, the suspect will be administered the official cautions[38] to ensure the admissibility of such information turned over voluntarily by the suspect. If the requested documents are not forthcoming, it will be necessary to proceed via a search warrant.[39] The Investigator assigned to the case will act as the informant.

5. PRELIMINARY ASSESSMENT OF FINDINGS

The Commissioner's Senior Counsel or the Chief Investigator when directed by Senior Counsel, will conduct a preliminary assessment[40] of the audit file to determine:

a) whether reasonable grounds exist to suspect that an offence has been committed under the *Acts* and by whom;

b) whether the facts can be verified or corroborated by financial records or by oral or written communications;

c) whether additional financial documents should be inspected[41] or whether further inquiries are required;

d) whether, after completion of an audit, a signed statement[42] is likely to be required from individuals such as Election Financing Directorate auditors; and

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[37] For example, see sections 359, 424 and 451 of the *Canada Elections Act*. Section 359 was declared to be unconstitutional by the Alberta Court of Appeal in *Harper* on December 16, 2002, *supra*, footnote 5. On September 4, 2003, the Supreme Court of Canada granted leave to appeal the decision of the Alberta Court of Appeal. Bill C-24 added obligations for registered associations (new s. 403.35), leadership contestants (new s. 435.3) and nomination contestants (new s. 478.23) to submit financial returns.

[38] See Chapter 7 – *Official cautions*.

[39] See Chapter 8 – *Access to records, books and documents*.

[40] See Chapter 3 – *Preliminary assessment of alleged infractions*, for further information on the criteria.

[41] See Chapter 10 – *Inspection, review and analysis of documents*, for more information on this matter.

[42] Refer to Chapter 11 – *Interview techniques*, for more information on the specific requirements.

e) whether a concurrent investigation and an administrative action should be carried out.

6. ASSESSMENT REPORT

The assessment report should clearly document the findings. Where appropriate, it should be supported by comments that will assist the Commissioner in determining the appropriate course of action.

Elections Canada

CHAPTER 7

OFFICIAL CAUTIONS

Commissioner of Canada Elections

January 2004

Chapter 7

OFFICIAL CAUTIONS

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1. INTRODUCTION

This chapter provides specific direction and general guidance to Investigators in the conduct of investigation proceedings with emphasis on their duty to act fairly and to protect the rights guaranteed under the *Canadian Charter of Rights and Freedoms* (hereunder, the *Charter*[1]).

1.1 Charter considerations

Recent decisions of the Supreme Court of Canada[2] require the police to caution, inform and facilitate a detainee's *Charter* protected right. These decisions extend the principle that demands fairness in the investigation stage and the unwillingness of the Court to sanction the gathering of evidence by investigators if individuals are unaware of their legal options.

The principle against self-incrimination is recognised under subsection 24(2) of the *Charter*.

Paragraph 11(*d*) of the *Charter* guarantees that a person charged with an offence will be presumed innocent until proven guilty, according to law, in a fair and public hearing by an independent and impartial tribunal.

Evidence obtained in a manner that infringes or denies any rights or freedoms guaranteed by the *Charter* may be dismissed by the Court.

2. INDIVIDUAL RIGHTS

Investigators will ensure that the following rights under the *Charter* are preserved in investigation proceedings for offences under the *Acts*;[3]

a) the right to remain silent;

b) the right to be informed of the right to retain and instruct counsel without delay;

c) the right to be protected from unreasonable search and seizure;

d) the right to be protected from the compulsory production of self-incriminating documentation without considered prior authorisation;

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[1] Enacted by the *Canada Act*, 1982 (U.K.), c. 11, Schedule B. The *Charter* is Part 1 of the *Constitution Act*.

[2] *R.* v. *Brydges* (1990), 74 C.R. (3d) 129, 53 C.C.C. (3d) 330 (S.C.C.). *R.* v. *Prosper* (1994), 33 C.R. (4th) 85, 92 C.C.C. (3d) 353 (S.C.C.), reversing (1992), 75 C.C.C. (3d) 1, 38 M.V.R. (2d) 268 (N.S. C.A.). *R.* v. *Bartle* (1994), 92 C.C.C. (3d) 289 (S.C.C.), reversing (1993), 22 C.R. (4th) 1, 81 C.C.C. (3d) 353 (Ont. C.A.). *R.* v. *Feeney* (1997), 2 S.C.R. 117.

[3] For the purpose of this manual, "*Acts*" include the *Canada Elections Act* and the *Referendum Act*.

e) the right to a reasonable time to decide whether to waive any right after having been informed of their existence.

To enable suspects to make an informed and appropriate decision on whether or not to waive their *Charter* protected rights, Investigators must also provide sufficient information about the specific offence under which a person may be charged. For example, Investigators should offer the suspect the opportunity to read the offence section and answer questions of clarification. The acceptance or refusal to read the offence section should be recorded. Investigators will ensure that the following rights are preserved in investigation proceedings under the *Acts*:

- the right to know the nature of possible proceedings;
- the right to be informed of the extent of the powers or the limits of the powers of a person in authority.[4]

Where access to records, books and accounts is needed from a suspect, Investigators should also refer to Chapter 8 and proceed in accordance with the policies and procedures set out in that chapter.

3. DEFINITIONS

3.1 Suspect

An individual is a "suspect" if a Investigator has reasonable grounds to believe that the individual is, or has been, a party to an offence under the *Acts*.

3.2 Witness

In general, a "witness" is one who, being present, sees or perceives a thing or event; one who is called to testify in court.[5]

An individual may also be considered a witness when Investigators have reasons to believe that the individual may have knowledge of facts, opinion, belief, information or evidence related to the investigation of an offence under the *Acts*, committed by another individual and in which he or she is not a suspect, whether material or not and whether admissible or not.

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[4] Refer to Chapter 2, for the definition of a person in authority.

[5] Definition from the Black's Law Dictionary, Sixth Edition, 1990, West Publishing Co.

3.3 Standard of belief

The appropriate "standard of belief" is similar to the standard of proof that must be satisfied to obtain a search warrant under section 487 of the *Criminal Code*.[6] The standard requires more than suspicion or intuition; it requires ascertaining whether there exists an objective basis to believe the allegations or information about an individual's conduct and responsibility in the commission of the alleged offence. The likelihood of the Commissioner of Canada Elections (the Commissioner) consenting to a prosecution against the individual, or the likelihood of the individual being charged, are not relevant factors.

4. POLICY

It is the policy of the Commissioner that official cautions should be read to a person if a statement[7] or documentary evidence may be used against that person in a court proceeding. The approved caution card[8] sets out:

a) a person's rights described in section 2 of this chapter;

b) the fact that Investigators do not have the powers to arrest or detain anyone;

c) the fact that suspects must be given the opportunity to ask questions.

Investigators must also ensure that the individuals clearly understand their rights when they knowingly waive their rights (for example, the right to retain and instruct counsel[9]) before accepting information, evidence and documentary records that will meet the court standards[10] concerning the admissibility of self-incriminating evidence. The required standards to be demonstrated to the court are that a self-incriminating statement was given willingly and voluntarily and that the statement was made by a mentally competent person. This does not mean that Investigators cannot use legitimate and legal means of persuasion to encourage a suspect to make a statement.

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[6] Refer to Appendix 5, at Chapter 8 – Access to records, books and documents, for more information concerning the standards of belief in the information to obtain a search warrant.

[7] Refer to Chapter 11 – *Interview techniques*, for more information on the recording of witness statement.

[8] Refer to the official caution card issued by the Commissioner.

[9] *Charter* protected rights under paragraph 10(b).

[10] Refer to subsection 24(2) of the *Canadian Charter of Rights and Freedoms*.

Although Investigators can[11] question anyone in order to obtain information with respect to an alleged offence, they have no power to compel a person to answer questions or to produce documentary records. Once a suspect has waived the right to counsel, or exercised that right, and agreed to talk to a Investigator, the latter may ask questions after the appropriate official cautions have been read.

In criminal cases, where a person is detained, the standard for a waiver of one's *Charter* rights is high. Waiver must be clear and unequivocal and made with full knowledge of the detainee's right under paragraph 10(*b*) of the *Charter*.

The *Acts* do not authorise Investigators to compel individuals to produce documents[12] for inspection, audit or examination,[13] unless through a court order such as a search warrant or a subpoena *duces tecum*.[14] Inspection of documents without a warrant, which are required during the course of a lawful investigation, can only proceed after suspects have received and understood the mandatory official cautions and waived their rights.

5. SPECIAL CONSIDERATIONS

According to section 9 of the *Charter*, "*everyone has the right not to be arbitrarily detained or imprisoned*".

The courts have ruled that a person may be detained not only through physical restraint, but that detention also includes a psychological element. The necessary element of compulsion or coercion to constitute detention may arise from criminal liability for refusal to comply with a detention or direction, or from a reasonable belief that one does not have a choice whether or not to comply.

Investigators must be mindful of the context of the interview, the way the interview is being held, and the formality of the proceedings. The setting, the tone of the voice used, and so on, may all reasonably convey to the suspect the impression that he is being detained, regardless of the fact that the Investigators do not have the authority to do so. For example, an interview in the private vehicle of the investigator should always be avoided.

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[11] Refer to Chapter 2 – *Qualifications, duties and responsibilities of Investigators*, for more information on the authority and powers of Investigators to conduct interviews.

[12] Refer to Chapter 8 – *Access to records, books and documents*, for more information on the procedures to follow.

[13] Refer to Chapter 10 – *Inspection, review and analysis of documents*, for more information on the procedures to follow to ensure the preservation and admissibility of documentary evidence.

[14] *Supra*, footnote 6.

It is also important to understand that official cautions are not required if the statement or documentary records will be used as evidence against another person. The decision not to provide the official caution to a suspect, in order to obtain documentary records or to elicit from him information or evidence, which could be used against other suspects, may only be taken by the Commissioner.[15]

When in doubt as to whether to provide the official cautions, Senior Counsel to the Commissioner or the Chief Investigator should be consulted prior to contacting the individual concerned or continuing the interview.

Subject to the provisions of the next paragraph, Investigators have the discretion not to provide any official caution when discussing purely non-substantive matters with a witness, such as other allegations of offences in which the individual is not directly involved, even if the suspect is closely related or associated with the individual interviewed.

This discretion is subject to two qualifications. First, during an interview, Investigators must be able to assess quickly when a witness becomes a suspect. They should not deliberately delay their assessment of the situation with respect to a particular individual, in order to obtain self-incriminating evidence from the individual. Second, as soon as they determine that a witness should be considered a suspect, Investigators should immediately interrupt the questioning and read the approved caution card.

Investigators may accept documents and ask questions after the appropriate cautions were read, but individuals, whether or not they have waived their rights, are under no obligation to produce documents and to answer any questions related to the information contained in the documents.

Investigators may question anyone, including a suspect, concerning their knowledge of the existence and the location of specific documents, which are required for the purpose of the investigation. Should the individual refuse to produce the documents (after receiving the official caution in the case of a suspect), the answers may assist in establishing the grounds of belief[16] required in the information to obtain a search and seizure warrant. However, Investigators should clearly explain to a suspect that the request for the production of documents would only be made after issuing the mandatory official caution to ensure the protection of his rights.

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[15] See section 512 of the *Canada Elections Act* which requires the prior written consent of the Commissioner for the prosecution of an offence and, as well, Chapter 4 – *Investigation policy*, for more information on the "Threshold Test and Standards" impacting on the decision to initiate, continue or terminate an investigation.

[16] *Supra*, footnote 6.

6. IMPROPER ACTIVITIES

Investigators may not induce individuals to provide any information, evidence or documentary records by threats, promises or other inducements, even if the appropriate caution has been given, and if the official caution is understood or not.[17] For example, Investigators should not suggest that the impugned conduct might be justified on the basis that anyone can make a mistake, or that many people engage in that type of conduct as a matter of course, or that it would be better for the individual to talk about it now than to force the Commissioner to prove it later.

Investigators may not suggest that immunity or other favourable treatment might be offered in return for information or evidence without first obtaining advice from the Chief Investigator, who shall seek direction from Senior Counsel to the Commissioner and the Commissioner. If an individual appears to be under the misconception[18] that there is any advantage to be gained by providing information or evidence, or that there is anything to be lost by failing to provide information or evidence, Investigators should immediately correct this misconception and report the matter to the Chief Investigator.

7. PROCEDURES FOR ISSUING OFFICIAL CAUTIONS

Where an official caution is to be given to an individual being investigated, the following steps[19] should be taken in the preparation of the questionnaire and execution of the interview.[20]

7.1 Identification and purpose of proceeding

Investigators must first provide proof of their identity by showing the numbered identification card issued by the Commissioner.[21] It is also recommended to offer a business card from the Commissioner's Office bearing the Investigator's name and telephone number.

Investigators should explain the election enforcement program, the role of the Commissioner and outline the objectives of the work assignment tasks undertaken on behalf of the Commissioner.

---

[17] *Horvath* v. *R.*, [1979] 2 S.C.R. 376, at 387-88, 44 C.C.C. (2d) 385, 7 C.R. (3d) 97, 93 D.L.R. (3d) 1, [1979] 3 W.W.R. 1, 25 N.R. 537.

[18] Refer to Chapter 15 — *Compliance agreements* — Section 5, on the procedure to follow when dealing with a suspect that is under the belief that he may not be liable to prosecution by cooperating with an investigator.

[19] See Appendix 1 at the end of this chapter, *Official caution and statement Form 1*, for the interview of a suspect.

[20] Refer to Chapter 11 – *Interview techniques*, for more information on the factors to consider in the preparation of interviews.

[21] *Supra*, footnote 4.

Prior to proceeding further, Investigators should allow the suspect an opportunity to ask questions and clarifications.

7.2 Possibility of criminal proceedings

Afterwards, when the Investigators are satisfied the suspect knows with whom he is dealing and understands the general purpose of the proceeding, the suspect must be warned of the possibility of criminal proceedings by stating the following official caution:

> *You are considered a suspect and you (may be/will be) charged with (describe the offence(s) and state applicable section(s) of the Act concerned).*

Investigators should offer the suspect an opportunity to read the section of the *Act* describing the offence; this will ensure that the suspect makes an informed decision on whether or not to exercise his right to counsel. Whether the suspect accepts or declines to read the offence section, the response should be recorded accordingly in the statement report.[22]

Then, the suspect should be asked:

> *Do you understand that the activities described in the provisions quoted are prohibited and constitute offence(s) under the Act concerned?*

Investigators must record any answer and the information provided in reply to concerns or questions raised by the suspect.

7.3 Limits on powers of a person in authority

Afterwards, when the Investigators are satisfied that the suspect understands the nature of the suspected offences under investigation, the suspect will be informed of the limitations of the Investigators' powers by stating the following official caution:

> *I have no authority to either arrest or detain you. Do you wish to say anything?*

Investigators must record any given answer and the information provided in reply to concerns or questions raised by the suspect.

---

[22] *Supra*, footnote 19, for more information on the essential reporting requirements of interviews.

7.4 Right to silence

Afterwards, when the Investigators are satisfied that the suspect understands that there is no reason to fear the threat of arrest or detention, the suspect must be informed of the right to silence by stating the following official caution:

> *You have the right to remain silent. You are not obliged to say anything unless you wish to do so, but whatever you say may be used as evidence in a court proceeding. Do you understand this?*

Investigators must ascertain whether the ***suspect*** understood this right and, in case of doubt, they should continue explaining until satisfied that the ***suspect*** does understand before proceeding any further.

The approved wording of the Right to Silence caution incorporates a second warning to ensure that individuals understand that, even if they have previously spoken to a person in authority,[23] the right to silence continues and they are not obliged to say anything on this occasion. Although a second warning is, strictly speaking, only required when an individual has already spoken to a person in authority, it is included in the standard formulation as a matter of prudence in case a Investigator is unaware of previous statements made by an individual to another person in authority.

The Investigators should not continue the proceeding unless certain that the suspect understands and has knowingly waived the right to remain silent.

Investigators must record the given answers.

7.5 Right to be protected from unreasonable search and seizure

Where access to documents from a suspect is required, before proceeding further, Investigators should follow the procedures[24] contained in sections 6.3 to 7 of Chapter 8 – *Access to records, books and documents*. This will ensure that the person was provided an opportunity to make an informed decision on whether or not to produce self-incriminating documentary evidence.

7.6 Right to retain and instruct counsel without delay

Investigators must inform the suspect of the right to retain and to instruct counsel without delay, by stating the following official caution:

---

[23] *Supra*, footnote 4.

[24] See Appendix 2, at the end of Chapter 8 – *Official caution and statement Form 2*, for interview of suspect where access to records, books and documents is also required.

> *You have the right to retain and instruct counsel without delay. This means that you may call your lawyer or you may get advice in the meantime from the Province Duty Counsel Service if available. You may also have the right to apply for legal assistance without charge through the Provincial Legal Aid Plan. Do you understand this?*

Details such as telephone numbers and address should be provided and also information about the availability of the Province Duty Counsel Service and Legal Aid in the jurisdiction in question. This information should be obtained from the local law enforcement agency. Investigators should provide a copy of the list of available Province Duty Counsel Service and Legal Aid lawyers and they should make it clear that the right to consult does not depend on the individual's ability to pay or never assume that the individual would not be eligible for Legal Aid.

If it appears that the individual does not understand, the Investigators should continue explaining until satisfied that the individual does understand.

Investigators must record the given answers.

Then, the Investigators must state the following official caution:

> *Do you wish to consult a lawyer?*

If there is any indication that the individual wishes to consult a lawyer or explore the availability of Legal Aid, the Investigators must indicate that the individual is free to consult or seek Legal Aid and terminate the proceeding to allow the individual to do so. Investigators must provide the individual with a reasonable opportunity to exercise the right to retain and instruct counsel without delay, and write the relevant details in the statement report.

If a suspect asks a Investigator about contacting a personal lawyer instead of a Legal Aid lawyer, the Investigator should state the individual is entitled to do so. Investigators must, however, refrain from expressing any opinion as to whether or not it would be appropriate for the individual to do so or to refer the individual to a specific law office or lawyer.

If the suspect wishes to consult a lawyer, the Investigator cannot continue questioning until the suspect has had a reasonable opportunity to consult a lawyer. If the individual has knowingly waived that right, the waiver must be clear and unequivocal. Investigators should ensure that prior to waiving a right, individuals understand the scope and the consequences of waiving their rights.

Investigators must record any given answers.

7.7 Reasonable time to decide

Then, Investigators must state to the individual the following:

> *Would you like me to leave and return after you have given the matter some thought?*

Where a suspect does not unequivocally waive each specific right, the Investigators should ensure that the suspect has a reasonable opportunity to think before making any decision. What constitutes a reasonable opportunity may depend on factors such as the urgency of obtaining information from the individual, the seriousness of the alleged offence, the existence of any statutory time limitations for prosecution[25] and the efforts of the individuals to consult counsel.

Generally, Investigators should give a suspect as long as they wish before proceeding further. To avoid any delays in the start-up of an interview, Investigators should determine with interviewees whether counsel should be present at the time the interview is scheduled.

If the interview is taking place on the suspect's premises and Investigators are asked to leave, they must do so immediately, except if the Investigators are authorized to be in the suspect's premises pursuant to a valid court order.[26]

When the suspect indicates that he is ready to communicate his decision, Investigators must record the answers on the statement report, including the time and the date. Where a suspect has communicated his decision to waive any right, Investigators must ask the suspect to read the statement report before signing. Should a suspect decline to read or to sign the statement report, Investigators must record the information accordingly.

7.8 When to repeat official cautions

Investigators should give a secondary official caution whenever questioning is resumed after a significant interruption.[27] All interruptions should be recorded in the statement report[28] with the date and time.

---

[25] See section 514 of the *Canada Elections Act* for more information concerning the time limitations for prosecution.

[26] *Supra*, footnote 9.

[27] See Appendix 3, at the end of this chapter, *Secondary caution and statement Form 3*, for interview of a suspect after an interruption.

[28] *Supra*, footnote 23, for the essential requirements of interview reports.

The nature or focus of an investigation may change and an individual may become a suspect of a different, more serious offence or other circumstances may arise that might cause an individual to reconsider the advisability of consulting counsel; should this situation occur, the questioning must not continue and the suspect must then be provided, without delay, an opportunity to consult counsel.

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Appendix 1

Official caution and statement Form 1

FOR INTERVIEW OF A SUSPECT WHERE ACCESS TO RECORDS, BOOKS AND DOCUMENTS IS NOT REQUIRED

Advise persons to be interviewed that it is their right to be served in the official language of their choice (French or English). Record the answer.
If you do not speak the language chosen, stop the interview and contact the Commissioner's Office to make the necessary arrangements to have another Investigator assigned to the interview.

PART 1 - IDENTIFICATION AND PURPOSE OF PROCEEDING

1. MY NAME IS ____________________, I AM A INVESTIGATOR WITH THE COMMISSIONER OF CANADA ELECTIONS. THE COMMISSIONER IS RESPONSIBLE FOR ENSURING THAT THE PROVISIONS OF THE CANADA ELECTIONS ACT ARE COMPLIED WITH AND ENFORCED. I AM SHOWING YOU MY IDENTIFICATION CARD NUMBERED _____ BEARING MY PHOTOGRAPH AND MY SIGNATURE, CERTIFIED BY THE COMMISSIONER.

2. DO YOU HAVE ANY QUESTIONS ABOUT MY IDENTITY?

*ANSWER*____

____

3. I NOW WISH TO EXPLAIN THE ELECTION ENFORCEMENT PROGRAM, THE ROLE OF THE COMMISSIONER AND OUTLINE THE SPECIFIC OBJECTIVES OF THE WORK ASSIGNMENT UNDERTAKEN ON BEHALF OF THE COMMISSIONER. **(Note: Refer to the *Protocol script for interviews*, Appendix 2)**

PART 2 - INTERVIEW COVER SHEET

STATEMENT

OF____

ADDRESS ____

____ TELEPHONE NO

____

DATE OF BIRTH ___________________________ PLACE OF BIRTH ________________________

PLACE OF INTERVIEW

____

DATE OF INTERVIEW ______________________ HOUR BEGAN ______________________

HOUR ENDED ______________________

Where the interview is interrupted, record the reason why ______________________________________

____

DATE OF INTERRUPTION ______________________ TIME OF INTERRUPTION ______________

SECONDARY CAUTION REQUIRED? NO ____ YES ____ FORM 3 SIGNED? NO _____ YES _____

DATE WHEN INTERVIEW RESUMED ___________ TIME WHEN INTERVIEW RESUMED __________

NAME AND ADDRESS
OF ALL PERSONS PRESENT ____

____

PART 3 - POSSIBILITY OF CRIMINAL PROCEEDINGS

4. YOU ARE CONSIDERED A SUSPECT AND MAY BE CHARGED WITH

____

____

(describe the offence(s) and state the applicable section of the Act concerned)

5. I AM GIVING YOU A PHOTOCOPY OF SECTION(S) ___________ OF THE *ACT* DESCRIBING THIS OFFENCE AND THE PENALTIES PROVIDED BY LAW. DO YOU WISH TO READ THESE PROVISIONS?

*ANSWER*____

____

6. DO YOU UNDERSTAND THAT THE ACTIVITIES DESCRIBED IN THE PROVISIONS QUOTED ARE PROHIBITED AND CONSTITUTE AN OFFENCE(S) UNDER THE ACT CONCERNED?

*ANSWER*____

____

PART 4 - LIMITS OF POWER OF PERSON IN AUTHORITY

7. I HAVE NO AUTHORITY TO EITHER ARREST OR DETAIN YOU. DO YOU WISH TO SAY ANYTHING?

*ANSWER*____

____

PART 5 - RIGHT TO SILENCE

8. YOU HAVE THE RIGHT TO REMAIN SILENT. YOU ARE NOT OBLIGED TO SAY ANYTHING

UNLESS YOU WISH TO DO SO, BUT WHATEVER YOU SAY MAY BE USED AS EVIDENCE IN A COURT PROCEEDING. DO YOU UNDERSTAND THIS?

*ANSWER*____

____

PART 6 - RIGHT TO RETAIN AND INSTRUCT COUNSEL WITHOUT DELAY

9. YOU HAVE THE RIGHT TO RETAIN AND INSTRUCT COUNSEL WITHOUT DELAY. THIS MEANS THAT YOU MAY CALL YOUR LAWYER OR YOU MAY GET ADVICE IN THE MEANTIME FROM THE PROVINCE DUTY COUNSEL IF AVAILABLE. YOU MAY ALSO HAVE THE RIGHT TO APPLY FOR LEGAL ASSISTANCE WITHOUT CHARGE THROUGH THE PROVINCIAL LEGAL AID PLAN. DO YOU UNDERSTAND THIS?

*ANSWER*____

____

10. DO YOU WISH TO CALL A LAWYER?

____

____

11. I AM GIVING YOU A TELEPHONE NUMBER, ____________, SO THAT YOU MAY CONTACT THE PROVINCE DUTY COUNSEL DURING OFFICE HOURS AND TELEPHONE NUMBER ____________ AFTER HOURS. DO YOU WISH TO CALL THE PROVINCE DUTY COUNSEL?

*ANSWER*____

____

12. I AM GIVING YOU A TELEPHONE NUMBER, ____________, SO THAT YOU MAY CONTACT THE PROVINCIAL LEGAL AID PLAN DURING OFFICE HOURS AND TELEPHONE NUMBER ____________ AFTER HOURS. DO YOU WISH TO CALL THE PROVINCIAL LEGAL AID OFFICE?

*ANSWER*____

____

PART 7 - REASONABLE TIME TO DECIDE

13. WOULD YOU LIKE TO THINK ABOUT IT FOR A FEW MINUTES?

ANSWER ____

IF YES ONLY IF VOLUNTERED, NOTE THE FOLLOWING DETAILS: __________________________________ __________________________________ ____________________ PERSON(S) CONSULTED: __________________________________ __________________________________ ____________________ TIME CONSULTED: __________________________________ __________________________________ ____________________	**IF NO** **WAIVER OF RIGHTS TO SPEAK TO A LAWYER** *I UNDERSTAND THAT I HAVE THE RIGHT TO CONSULT WITH A COUNSEL WITHOUT DELAY PRIOR TO GIVING ANY STATEMENT. I UNDERSTAND THAT I HAVE THE RIGHT TO HAVE COUNSEL PRESENT WHEN I MAKE A STATEMENT. I ALSO UNDERSTAND THAT I HAVE BEEN GIVEN A REASONABLE OPPORTUNITY TO CONTACT A LAWYER AND I UNDERSTAND THAT YOU MUST HOLD OFF THE INTERVIEW PROCEEDING UNTIL I HAVE HAD THAT REASONABLE OPPORTUNITY. I DO NOT WISH TO CONSULT WITH COUNSEL (A LAWYER).* ______________________________ SIGNATURE ______________________________ WITNESSED BY

14. I ALSO WISH TO ADVISE IF YOU CHOOSE TO MAKE A STATEMENT, THAT YOU MAY STOP AT ANY TIME YOU WISH AND EXERCISE ANY OF YOUR RIGHTS. DO YOU UNDERSTAND?

*ANSWER*____

____

15. DATE _____________________ AND TIME _________________ STATEMENT COMMENCED.

THIS STATEMENT IS MADE OF MY OWN FREE WILL AND IS AS FOLLOWS:

Note: Use the space below or any other suitable numbered sheets of paper which should then be attached to this Official caution and statement Form 1.

At the end of the statement, record the following, immediately below the last paragraph.

I hereby acknowledge that I have read or have had read to me my statement and agree with its content.

____

signature witnessed by

____

other persons present

Time statement concluded ________

If you wish, you will be provided with a copy of your declaration. Copy provided: NO _____ YES _____.

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Appendix 2

Protocol Script for Interviews

Advise persons to be interviewed of their right to be served in the official language of their choice (French or English). Record the answer.
If you do not speak the language chosen, stop the interview and contact the Commissioner's Office to make the necessary arrangements to have another Investigator assigned to the interview.

I wish to thank you for taking the time to meet with me and I appreciate the inconvenience this may have caused. As stated on my identification card, I am a Investigator for the Commissioner of Canada Elections. The Commissioner is responsible, under sections 509 to 513 of the *Canada Elections Act*, to ensure that the provisions of the *Act* are complied with and enforced. I bring to your attention a photocopy of these sections and invite you read them and initial the pages. Do you have any questions?

____

____

An apparent non-compliance with the *Canada Elections Act* has come to the attention of the Commissioner, particularly with section(s):

____

____

(Describe the section(s) as stated in the work assignment)

In keeping with the standard practice of the Office of the Commissioner of Canada Elections, and in accordance with the law, the Commissioner must take the necessary steps to determine whether or not the facts disclose a compliance and enforcement issue under the *Canada Elections Act*. Do you understand this?

____

____

I have been instructed by the Commissioner to conduct this interview and I have reasons to believe that you may be able to shed light on some points. Do you understand the purpose of my visit?

____

____

I am seeking your cooperation. I also wish to provide you with this opportunity to tell us what you know about these matters. Do you have any questions?

____

____

There are specific points that need to be discussed. I propose to begin with the points on which we have insufficient information to determine whether or not the matter should be further pursued. It is my responsibility to ensure that your rights are properly protected. The interview will last about _____ hours. May I continue?

____

____

If you wish, you will be provided with a copy of your declaration. Copy provided: NO _____ YES _____.

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Appendix 3

Secondary caution and statement Form 3

FOR INTERVIEW OF A SUSPECT AFTER AN INTERRUPTION

1. I WISH TO GIVE YOU THE FOLLOWING CAUTION. I AM SHOWING YOU THE OFFICIAL CAUTION AND STATEMENT FORM NUMBER _____ WHICH YOU PREVIOUSLY SIGNED IN THE PRESENCE OF _________________ WHO IS A INVESTIGATOR FOR THE COMMISSIONER OF CANADA ELECTIONS. THIS DOCUMENT WAS DRAFTED ON THE _____ DAY OF THE MONTH ______ 20 ____, AT ___________ IN THE CITY OF ___________. DO YOU WISH TO READ THIS DOCUMENT AND TO REVIEW YOUR RIGHTS ?

ANSWER

____

____

2. YOU MUST CLEARLY UNDERSTAND THAT ANYTHING SAID TO YOU PREVIOUSLY AS RECORDED IN THE DOCUMENT DESCRIBED ABOVE SHOULD NOT INFLUENCE YOU OR MAKE YOU FEEL COMPELLED TO SAY ANYTHING AT THIS TIME. YOU ARE NOT OBLIGED TO SAY ANYTHING FURTHER, BUT WHATEVER YOU SAY MAY BE USED AS EVIDENCE IN A COURT PROCEEDING.

3. DO YOU UNDERSTAND WHAT I HAVE JUST SAID TO YOU?

ANSWER

____

____

____

____
signature

____
witnessed by

Date __________ Time _________

If you wish, you will be provided with a copy of your declaration. Copy provided: NO _____ YES _____.

Elections Canada

CHAPTER 8

ACCESS TO RECORDS, BOOKS AND DOCUMENTS

Commissioner of Canada Elections

January 2004

ACCESS TO RECORDS, BOOKS AND DOCUMENTS

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1. INTRODUCTION

This chapter provides specific direction and general guidance to Investigators, with emphasis on their duty to act fairly and protect the rights guaranteed by the *Canadian Charter of Rights and Freedoms* (hereunder, the *Charter*[1]), in the conduct of investigation proceedings requiring access to personal information data banks and handling of documents.

Except where it is otherwise stipulated in this chapter, the provisions and directives laid out in Chapter 6, *Official cautions*, also apply. Investigators should read both chapters in conjunction.

2. POLICY

First, access to personal information data banks shall only be obtained through lawful means in accordance with the respective provisions governing the disclosure of such information. Second, official cautions shall be read to a person if a statement or documentary evidence may be used against that person in a court proceeding.

3. PROTECTION OF THE PRIVACY OF INDIVIDUALS AND ACCESS TO PERSONAL INFORMATION DATA BANKS

The federal government and most provinces have in place legislation protecting the privacy of individuals. As a general rule, personal information can only be released to a third party, such as the Commissioner of Canada Elections, under the following conditions:[2]

a) with the personal consent of the individual to whom the information relates;

b) for a reason consistent for the purpose for which the information was collected;

c) to an investigative body specified in the regulations, on the written request of the body, for the purpose of enforcing any law of Canada or of a province or for carrying out a lawful investigation; [3] or

d) to any government institution for the purpose of locating an individual in order to collect a debt from that individual or make a payment owing to that individual by Her Majesty in right of Canada.

---

[1] Enacted by the *Canada Act*, 1982 (U.K.), c. 11, Schedule B. The *Charter* is Part 1 of the *Constitution Act*.

[2] Refer to section 8 of the *Privacy Act*, R.S. 1985, c. P-21, at Appendix 9 at the end of this chapter.

[3] At the time of writing, the Office of the Commissioner of Canada Elections has not been designated an investigative body under the *Privacy Act*.

For a full list of reasons allowing the release of personal information to a third party, see subsection 8(2) of the *Privacy Act*.

4. RIGHT TO BE SECURE FROM UNREASONABLE SEARCH AND SEIZURE

Investigators may be instructed to request access to federal, provincial or municipal personal information data banks and to obtain documentary information or evidence from individuals.[4] During the course of an investigation, they may also need to access and verify additional documentation and to question individuals about the information contained therein or related to the documentation. Alternatively, individuals may also want to check information and review documents in their possession before producing the documentation or answering a question during an interview.

The *Acts*[5] do not authorise Investigators to compel individuals to produce documents for inspection,[6] audit or examination, other than through a court order such as a search warrant or a subpoena *duces tecum*.[7]

5. DEFINITIONS

5.1 Suspect

An individual is a "suspect" if a Investigator has reasonable grounds to believe an individual is, or has been, a party to an offence under the *Acts*.

5.2 Witness

In general, a "witness" is one who, being present, sees or perceives a thing; one who is called to testify in court.[8]

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[4] Refer to Chapter 5 – *Direction and control of investigation*, for more information on work assignment and the scope and objectives of investigations approved by the Commissioner.

[5] For the purpose of this manual, "*Acts*" include the *Canada Elections Act* and the *Referendum Act*.

[6] Refer to Chapter 10 – *Inspection, review and analysis of documents*, for more information on the procedures for the preservation and admissibility of documentary evidence in court proceedings.

[7] Refer to Appendix 5, at the end of this chapter, for more information on the procedures for obtaining a search and seizure warrant. A *subpoena duces tecum* requires production of books, papers and other things.

[8] Definition from the *Black's Law Dictionary*, Sixth Edition, 1990, West Publishing Co.

An individual may also be considered a "witness" when Investigators have reasons to believe that this individual may have knowledge of facts, opinions, beliefs, information or evidence related to the investigation of an offence under the *Acts*, committed by another individual and in which he is not a "suspect", whether material or not and whether admissible or not.

5.3 Personal information

"*Personal Information*" means information about an identifiable individual that is recorded in any form, as defined in section 3 of the *Privacy Act*.

5.4 Election documents

"*Election documents*" are defined under section 2 of the *Act* and includes all the papers, which must be transmitted to the Chief Electoral Officer by the returning officer[9] after an election.

5.5 Other documents

"*Other documents*" mean the various statements, books and records relating to an election campaign and which may be required for the investigation of an alleged infraction. This includes:

a) deposit slips, cancelled cheques and bank statements[10] evidencing campaign expenses;[11]
b) details of bills and vouchers related to the payment of campaign expenses;[12]
c) list of contributions of goods and services;[13]
d) statements and documentation supporting personal expenses of candidates;[14]
e) loan agreements and repayment schedules,[15] unpaid claims[16] and judge's order for the payment of unpaid claims;

---

[9] Refer to Appendix 1, at the end of this chapter, for a list of election documents which can be accessed for the purpose of an investigation.

[10] See subsections 437(1), 435.21 and 478.12, as well as 451(1), 435.3(3) and 478.23(3) of the *Canada Elections Act*.

[11] See sections 406 and 407 of the *Canada Elections Act*.

[12] See subsections 451(1), 435.3(3) and 478.23(3) of the *Canada Elections Act*.

[13] See paragraphs 451(2)(f) and (g), 435.3(2)(*e*) and (*f*) and 478.23(2)(*e*), (*e*.1) and (*f*) of the *Canada Elections Act*.

[14] See paragraphs 451(2)(*a*) and (*c*) and section 456 of the *Canada Elections Act*.

[15] See subsections 451(3), 435.2(*d*.1) and 478.23(5) of the *Canada Elections Act*.

[16] See paragraph 451(2)(*e*), sections 447 and 448, paragraph 435.3(2)(*c*), sections 435.26 and 435.27, as well as paragraph 478.23(2)(*c*), sections 478.19 and 478.2 of the *Canada Elections Act*.

f) records of contributions and official income tax receipts[17] issued and recorded in the candidate's return;[18]
g) documents to support a judicial recount;[19]
h) auditor's report,[20] declaration of the candidate, leadership or nomination contestant and the official or financial agent.[21]

6. PROCEDURES FOR ACCESS TO DOCUMENTATION

Where access to documentation from an individual is required, Investigators must first determine, prior to the interview, whether the individual should be considered a ***suspect*** or a ***witness***. Then they proceed during the phase of interview preparation[22] and the conduct of the proceeding, in accordance with the applicable policy and procedures as follows:

a) where an individual is considered a ***suspect***, Investigators will follow the procedures described below in sections 6.2 to 8 of this chapter, in addition to the applicable provisions concerning the other official cautions which must be read to a ***suspect***, as described in section 7 of Chapter 7;

b) where an individual is considered a ***witness***, Investigators will follow the procedures laid out below in sections 9 to 11 of this chapter, without providing any official caution.

If the required personal information cannot be collected directly from an individual, then access to a personal information data bank may be necessary.

Access to personal information data banks may be required to determine the identity of a person, the age, citizenship status, the place of ordinary residence or temporary residence. Access may also be required to ascertain other facts germane to an investigation and to collect available elements of evidence required for a successful prosecution. For example, depending on the circumstances of the case, this may include personal information data banks held by Canada Post, Citizenship and Immigration Canada, the Provincial Motor Vehicle Registration Office, the Municipal Property Taxation Services, law enforcement agencies and financial institutions.

---

[17] See subsection 438(3) of the *Canada Elections Act*.

[18] Refer to the section 2 of the *Canada Elections Act* for the definition of *"commercial value of goods and services provided or donated"*, and section 451 of the *Canada Elections Act* for more detailed information on the records required to be filed and transmitted with the return.

[19] See subsection 304(2) of the *Canada Elections Act*.

[20] See paragraph 451(1)(*b*) and section 453, paragraph 435.3(1)(*b*) and section 435.33, as well as paragraph 478.23(1)(*b*) and section 478.28 of the *Canada Elections Act*.

[21] See paragraphs 451(1)(*d*) and (*e*), 435.3(1)(*c*) and (*d*) and 478.23(1)(*c*) and (*d*) of the *Canada Elections Act*.

[22] Refer to Chapter 11 – *Interview techniques*, for more information on the factors to consider during the preparation of interviews.

6.1 Procedures to access personal information data banks

Where access is sought from federal, provincial, municipal or private personal information data banks, it is incumbent upon Investigators to proceed as follows:

a) state the reasons for the access;
b) explain the authority to investigate;
c) identify the specific information, and;
d) disclose what use will be made of it.

This will provide their interlocutor with the information necessary to determine if access to personal information in their personal information data banks can be granted.

6.2 In case of refusal

Should a Investigator be refused access to personal information as a result of privacy legislation, the matter should be brought to the attention of the Chief Investigator and Senior Counsel to the Commissioner. It may be possible to negotiate a Memorandum of Understanding with the institution to release certain personal information[23] deemed to have been collected for a consistent use.

The Commissioner may consider requesting the assistance of the RCMP or a police force having jurisdiction in the investigation[24] or for that organisation to participate in a joint investigation with Investigators.[25] However, amendments to the *Canada Elections Act* that were adopted in 2003 potentially decrease the number of instances where assistance will be required. These amendments include Investigators as "public officers" for the purposes of seeking a search and seizure warrant from a court under section 487 of the *Criminal Code*.[26]

6.3 Procedures to access documentation from a suspect

Where access to documentation from a ***suspect*** is required, Investigators should proceed as follows:[27]

---

[23] See paragraph 8(2)*f*) of the *Privacy Act* at Appendix 9 at the end of this chapter.

[24] Where the R.C.M.P. seeks information otherwise protected by the *Privacy Act* in the course of an investigation on behalf of the Commissioner, the request for that information will specify that it is for an investigation being conducted on behalf of the Commissioner and the R.C.M.P. will disclose that information to the Commissioner to the extent provided for by the *Privacy Act* or any arrangement or agreement thereunder.

[25] For more information on investigative approaches refer to Chapter 5 – *Direction and control of investigation.*

[26] Paragraph 511(2) of the *Canada Elections Act*, adopted by Parliament in Bill C-24, coming into force on January 1, 2004.

[27] See Appendix 2 at the end of this chapter, *Official caution and statement Form 2.*

The right to be secure against unreasonable search or seizure[28]

After completing the procedures laid out in sections 7.1 to 7.4 of Chapter 7, the ***suspect*** must be warned of the right to be secure from unreasonable search and seizure by stating the following official caution:

> *You are under no obligation to produce documents (describe each one with sufficient details to be retrievable) and you are free to provide me access to these documents if you so wish. Do you have any question?*

Investigators must ascertain whether the ***suspect*** understood this right and, in case of doubt, they should continue explaining until satisfied that the ***suspect*** does understand before proceeding any further.

Investigators must record in the statement report any answers provided by the ***suspect*** and any additional information or explanation offered to the ***suspect***.

Then, Investigators must continue the proceeding as described in sections 7.5 to 7.7 of Chapter 7 and issue the other three official cautions.

6.4 In case of refusal

It is the ***suspect***'s prerogative to refuse to produce or remit documents. In such cases, Investigators must advise the ***suspect*** that they accept the decision and record the matter accordingly in the statement report. They should also advise the ***suspect*** that the matter will be reported to the Commissioner who may consider requesting a court order[29] to obtain access to these documents.[30]

7. PROCEDURES FOR RECEIPT OF DOCUMENTS FROM A SUSPECT

Before handling documents, Investigators should take the time to explain briefly to the ***suspect*** that these documents may serve as evidence in a trial and that they must adhere to necessary procedures for the handling of documents.[31] Investigators should then proceed as follows:

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[28] *Canadian Charter of Rights and Freedoms* (*Constitution Act*, 1982, s. 8).

[29] *Supra*, footnote 7, for more information on the specific requirements to obtain a search and seizure warrant.

[30] If the suspect is an official agent, Investigators may remind the person that records and books of accounts for all amounts contributed and expenditures made must, under the *Income Tax Act*, be retained for two full years after the calendar year so that these amounts can be verified.

[31] For more information on this matter, refer to Chapter 9 – *Collection, use and preservation of evidence.*

a) ask the individual to initial and date each document in the lower right hand corner to ensure proper identification and retrieval in any later assessment, inspection, verification or court proceedings. For multi-page documents, which are clearly numbered, the covering page only needs to be dated and initialled;

b) after the individual has completed the process described in a) above, the Investigators must initial each numbered page;

c) in the event that the individual refuses to initial the documents, Investigators should make note of it;[32]

d) in order to avoid confusion, a different recognisable symbol or reference should be placed on each category of documents. For instance, documents provided by suspects could be marked with their initials and a sequential numbering system (eg. JED 1, JED 2, etc.);

e) should the ***suspect*** request a copy of the documents, Investigators should make the necessary arrangements to photocopy the marked documents within a reasonable time which is agreeable to the ***suspect***;

f) the ***suspect*** should also be provided with a receipt containing the number and description of each document and the date and time they were provided; the receipt should be signed by the Investigator who collected the documents;

g) the ***suspect*** should also be advised that they will be returned, in any event, even if the documents are required in court as evidence or exhibit.

8. PRELIMINARY VERIFICATION AND INSPECTION OF DOCUMENTS PRODUCED BY A SUSPECT

Unless instructed otherwise by the Chief Investigator or Senior Counsel to the Commissioner, in depth questioning of individuals should be deferred until a more thorough inspection of the content of the documents has been completed by Senior Counsel to the Commissioner or the Chief Investigator.

However, depending on the circumstances, the number and complexity of the documents and the status of the investigation, Investigators may question the ***suspect*** on the spot about the information contained in the documents and related to these documents.[33] They can accept and report any unsolicited oral information or comments volunteered by the ***suspect*** in relation to the information contained in the documents. Investigators should advise the ***suspect*** that, after the inspection and verification of the documents is completed, there may be a need for a second interview. Should a second interview be required to discuss incriminating documents, the ***suspect*** should be advised of the right to counsel and the right to remain silent.[34]

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[32] Refer to Chapter 11 – *Interview techniques*, for more information on the reporting requirements of interviews.

[33] *Supra*, footnote 30, for more information on the preparation of written questions when documents are expected to be introduced or produced during the course of an interview with individuals.

9. PROCEDURES TO ACCESS DOCUMENTATION FROM A WITNESS

Even though it is not necessary to provide the official caution to individuals who are not *suspects*, Investigators cannot compel them to produce any documentation against their will, regardless if the documentation requested from the individuals could only be used against someone else in a court proceeding. Investigators must therefore use tact, skill and persuasion to obtain the co-operation of a ***witness*** in producing documents required for the purpose of the investigation. Investigators should proceed as follows:

- explain to the ***witness*** the alleged offences under investigation;

- state which specific documents are required, including their description, and provide the necessary explanations as to the relevancy of the documents in the context of the investigation;

- establish with the ***witness*** whether the documents exist and are available, the specific location and address where the documents are stored or retained and by whom;

- ask the ***witness*** about assisting in the investigation and voluntarily producing the documents requested or providing a written consent to access personal information held by a government institution. Record the decision, date and time.

9.1 In case of refusal

In case of refusal to produce or remit documents, Investigators should advise the ***witness*** that:

a) there is no obligation to produce such documents but that any co-operation would be appreciated;

b) the Commissioner may request access to the institution having control of the personal bank of documents or consider requesting a court order to obtain access to those required.[35]

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[34] See Appendix 2 at the end of this chapter.

[35] *Supra*, footnote 6.

10. PROCEDURES FOR RECEIPT OF DOCUMENTS FROM A WITNESS

Investigators should follow the same procedures as those described in section 7 as noted above for handling and processing documents, which may be used in any possible court proceedings.

11. PRELIMINARY VERIFICATION AND INSPECTION OF DOCUMENTS PRODUCED BY A WITNESS

For the preliminary inspection of documents produced by a ***witness***, Investigators should follow the same procedures as those contained in section 8 above.

In addition, where Investigators, during the course of a preliminary assessment, have reasonable grounds to believe that the ***witness***, who provided the documentation, should be considered as a ***suspect***, then Investigators must stop questioning the **witness** and read the appropriate official cautions applicable to a **suspect**. When ***suspects*** understand and if they agree to waive their rights, Investigators can then continue to ask questions about the information contained in the documents as laid out in section 8 above.

12. PREPARATION AND REVIEW OF THE INFORMATION FOR A SEARCH AND SEIZE WARRANT

Should the Commissioner deem it necessary to make an application for a search and seize warrant under the *Criminal Code*, Senior Counsel to the Commissioner instructs the agent retained by the Commissioner for this purpose to prepare a draft of the information on Form 1 for review by Senior Counsel to the Commissioner and the Chief Investigator. Investigators will serve as the informant, swear the information under oath, and verify and ascertain that it is accurate.[36]

The information must contain a detailed description of the things to be searched for and seized, of the offence for which a search is to be made and the complete address of the premises.[37] The Investigators must believe, with reasonable grounds, that the said things are in a specific place or dwelling. It must also be stated whether alternate sources of information exist and whether they have been exhausted. It is therefore imperative that Investigators review the complaint file and take cognizance of all relevant facts on which the Commissioner's decision to seek a search warrant was made.

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[36] See *Search warrant information checklist* in Appendix 5, at the end of this chapter.

[37] For an investigation or an application for an order for a search warrant in relation to the use by a member of the House of Commons of funds, goods and services or premises, refer to section 52.7 and ss. of the *Parliament of Canada Act*, R.S., c. P-1 (see Appendix 8). Special rules may also apply to members of a Provincial Legislature or Assembly.

The Investigator, as the informant, will be accompanied by the legal agent retained by the Commissioner and must be prepared to answer questions from the "Justice" concerning the investigation findings. The informant must sign the information under oath before a "Justice" and state the profession as Investigator for the Commissioner of Canada Elections.

Appendix 1

List of election documents which can be accessed for the purpose of an investigation

"Election documents" means the following documents:

(a) the writ with the return of the election endorsed on it;

(b) the nomination papers filed by the candidates;

(c) the reserve supply of undistributed blank ballot papers;

(d) documents relating to the revision of the lists of electors;

(e) the statements of the vote from which the validation of results was made; and

(f) the other returns from the various polling stations enclosed in sealed envelopes, as required by Part 12, and containing

  (i) a packet of stubs and unused ballot papers,

  (ii) packets of ballot papers cast for the various candidates,

  (iii) a packet of spoiled ballot papers,

  (iv) a packet of rejected ballot papers,

  (v) a packet containing the list of electors used at the polling station, the written authorizations of candidates' representatives and the used transfer certificates, if any, and

  (vi) a packet containing the registration certificates.

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Appendix 2

Official caution and statement Form 2

FOR INTERVIEW OF A SUSPECT WHERE ACCESS TO RECORDS, BOOKS AND DOCUMENTS IS ALSO REQUIRED

> Advise persons to be interviewed that it is their right to be served in the official language of their choice (French or English). Record the answer.
> If you do not speak the language chosen, stop the interview and contact the Commissioner's Office to make the necessary arrangements to have another Investigator assigned to the interview.

PART 1 - IDENTIFICATION AND PURPOSE OF PROCEEDING

1. MY NAME IS ____________________, I AM A INVESTIGATOR WITH THE COMMISSIONER OF CANADA ELECTIONS. THE COMMISSIONER IS RESPONSIBLE FOR ENSURING THAT THE PROVISIONS OF THE CANADA ELECTIONS ACT ARE COMPLIED WITH AND ENFORCED. I AM SHOWING YOU MY IDENTIFICATION CARD NUMBERED _____ BEARING MY PHOTOGRAPH AND MY SIGNATURE, CERTIFIED BY THE COMMISSIONER.

2. DO YOU HAVE ANY QUESTIONS ABOUT MY IDENTITY?

*ANSWER*____

____

3. I NOW WISH TO EXPLAIN THE ELECTION ENFORCEMENT PROGRAM, THE ROLE OF THE COMMISSIONER AND OUTLINE THE SPECIFIC OBJECTIVES OF THE WORK ASSIGNMENT UNDERTAKEN ON BEHALF OF THE COMMISSIONER. **(Note: Refer to the *Protocol script for interviews*, Appendix 3)**

PART 2 - INTERVIEW COVER SHEET

STATEMENT

OF____

ADDRESS ____

______________________________ TELEPHONE NO

____

DATE OF BIRTH ____________________ PLACE OF BIRTH ____________________

PLACE OF INTERVIEW

____

DATE OF INTERVIEW ____________________ HOUR BEGAN

____

HOUR ENDED

____

Where the interview is interrupted, record the reason why ______________________________

____

DATE OF INTERRUPTION ____________ TIME OF INTERRUPTION ____________

SECONDARY CAUTION REQUIRED? NO _____ YES _____ FORM 3 SIGNED? NO _____ YES _____

DATE WHEN INTERVIEW RESUMED ____________ TIME WHEN INTERVIEW RESUMED ____________

NAME AND ADDRESS
OF ALL PERSONS PRESENT ______________________________

____

PART 3 - POSSIBILITY OF CRIMINAL PROCEEDINGS

4. YOU ARE CONSIDERED A SUSPECT AND MAY BE CHARGED WITH

____

____

(describe the offence(s) and state the applicable section of the Act concerned)

5. I AM GIVING YOU A PHOTOCOPY OF SECTION(S) ____________ OF THE *ACT* DESCRIBING THIS OFFENCE AND THE PENALTIES PROVIDED BY LAW. DO YOU WISH TO READ THESE PROVISIONS?

ANSWER ______________________________

____

6. DO YOU UNDERSTAND THAT THE ACTIVITIES DESCRIBED IN THE PROVISIONS QUOTED ARE PROHIBITED AND CONSTITUTE AN OFFENCE UNDER THE ACT CONCERNED?

ANSWER ______________________________

____

PART 4 - LIMITS OF POWER OF PERSON IN AUTHORITY

7. I HAVE NO AUTHORITY TO EITHER ARREST OR DETAIN YOU. DO YOU WISH TO SAY ANYTHING?

ANSWER ______________________________

____

PART 5 - RIGHT TO SILENCE

8. YOU HAVE THE RIGHT TO REMAIN SILENT. YOU ARE NOT OBLIGED TO SAY ANYTHING UNLESS YOU WISH TO DO SO, BUT WHATEVER YOU SAY MAY BE USED AS EVIDENCE IN A COURT PROCEEDING. DO YOU UNDERSTAND THIS?

*ANSWER*____

PART 6 – THE RIGHT TO BE SECURED FROM UNREASONABLE SEARCH AND SEIZURE

9. YOU ARE UNDER NO OBLIGATION TO PRODUCE THE FOLLOWING DOCUMENTS

*ANSWER*____

____

(describe each one with sufficient detail to be retrievable)

AND YOU ARE FREE TO PROVIDE ME ACCESS TO THESE DOCUMENTS IF YOU SO WISH.

*ANSWER*____

____

10. *(IN CASE OF REFUSAL)* I AM ADVISING YOU THAT THE MATTER WILL BE REPORTED TO THE COMMISSIONER WHO MAY CONSIDER REQUESTING A COURT ORDER TO OBTAIN ACCESS TO THESE DOCUMENTS. DO YOU UNDERSTAND THIS?

*ANSWER*____

____

PART 7 - RIGHT TO RETAIN AND INSTRUCT COUNSEL WITHOUT DELAY

11. YOU HAVE THE RIGHT TO RETAIN AND INSTRUCT COUNSEL WITHOUT DELAY. THIS MEANS THAT YOU MAY CALL YOUR LAWYER OR YOU MAY GET TEMPORARY ADVICE FROM THE PROVINCE DUTY COUNSEL IF AVAILABLE. YOU MAY ALSO HAVE THE RIGHT TO APPLY FOR LEGAL ASSISTANCE WITHOUT CHARGE THROUGH THE PROVINCIAL LEGAL AID PLAN. DO YOU UNDERSTAND THIS?

*ANSWER*____

____

12. DO YOU WISH TO CALL YOUR LAWYER?

*ANSWER*____

____

13. I AM GIVING YOU A TELEPHONE NUMBER, ______________, SO THAT YOU MAY CONTACT THE PROVINCE DUTY COUNSEL DURING OFFICE HOURS AND TELEPHONE NUMBER ____________ AFTER HOURS. DO YOU WISH TO CALL THE PROVINCE DUTY COUNSEL?

*ANSWER*____

____

14. I AM GIVING YOU A TELEPHONE NUMBER, _______________, SO THAT YOU MAY CONTACT THE PROVINCIAL LEGAL AID PLAN DURING OFFICE HOURS AND TELEPHONE NUMBER _____________ AFTER HOURS. DO YOU WISH TO CALL THE PROVINCIAL LEGAL AID OFFICE?

*ANSWER*____

____

PART 8 - REASONABLE TIME TO DECIDE

15. WOULD YOU LIKE TO THINK ABOUT IT FOR A FEW MINUTES?

ANSWER ____

____

IF YES ONLY IF VOLUNTEERED, NOTE THE FOLLOWING DETAILS: ______________________ ______________________ ______________________ PERSON(S) CONSULTED: ______________________ ______________________ ______________________ TIME CONSULTED: ______________________ ______________________ ______________________	**IF NO** **WAIVER OF RIGHTS TO SPEAK TO A LAWYER** *I UNDERSTAND THAT I HAVE THE RIGHT TO CONSULT WITH A COUNSEL WITHOUT DELAY PRIOR TO GIVING ANY STATEMENT. I UNDERSTAND THAT I HAVE THE RIGHT TO HAVE COUNSEL PRESENT WHEN I MAKE A STATEMENT. I ALSO UNDERSTAND THAT I HAVE BEEN GIVEN A REASONABLE OPPORTUNITY TO CONTACT A LAWYER AND I UNDERSTAND THAT YOU MUST HOLD OFF THE INTERVIEW PROCEEDING UNTIL I HAVE HAD THAT REASONABLE OPPORTUNITY. I DO NOT WISH TO CONSULT WITH COUNSEL (A LAWYER).* ______________________ SIGNATURE ______________________ WITNESSED BY

16. I ALSO WISH TO ADVISE IF YOU CHOOSE TO MAKE A STATEMENT, THAT YOU MAY STOP AT ANY TIME YOU WISH AND EXERCISE ANY OF YOUR RIGHTS. DO YOU UNDERSTAND?

ANSWER ____

____

17. DATE ________________ AND TIME ______________ STATEMENT COMMENCED.

THIS STATEMENT IS MADE OF MY OWN FREE WILL AND IS AS FOLLOWS:

Note: Use any other suitable numbered sheets of paper which should then be attached to this Official caution and statement Form 2.

At the end of the statement, record the following, immediately below the last paragraph.

I hereby acknowledge that I have read or have had read to me my statement and agree with its content.

signature	witnessed by

other persons present

Time statement concluded ________

If you wish, you will be provided with a copy of your declaration. Copy provided: NO _____ YES _____.

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Appendix 3

Protocol Script for Interviews

Advise persons to be interviewed of their right to be served in the official language of their choice (French or English). Record the answer.
If you do not speak the language chosen, stop the interview and contact the Commissioner's Office to make the necessary arrangements to have another Investigator assigned to the interview.

I wish to thank you for taking the time to meet with me and I appreciate the inconvenience this may have caused. As stated on my identification card, I am a Investigator for the Commissioner of Canada Elections. The Commissioner is responsible, under sections 509 to 513 of the *Canada Elections Act*, to ensure that the provisions of the *Act* are complied with and enforced. I bring to your attention a photocopy of these sections and invite you read them and initial the pages. Do you have any questions?

An apparent non-compliance with the *Canada Elections Act* has come to the attention of the Commissioner, particularly with section(s):

(Describe the section(s) as stated in the work assignment)

In keeping with the standard practice of the Office of the Commissioner of Canada Elections, and in accordance with the law, the Commissioner must take the necessary steps to determine whether or not the facts disclose a compliance and enforcement issue under the *Canada Elections Act*. Do you understand this?

I have been instructed by the Commissioner to conduct this interview and I have reasons to believe that you may be able to shed light on some points. Do you understand the purpose of my visit?

I am seeking your cooperation. I also wish to provide you with this opportunity to tell us what you know about these matters. Do you have any questions?

There are specific points that need to be discussed. I propose to begin with the points on which we have insufficient information to determine whether or not the matter should be further pursued. It is my responsibility to ensure that your rights are properly protected. The interview will last about _____ hours. May I continue?

If you wish, you will be provided with a copy of your declaration. Copy provided: NO _____ YES _____.

Appendix 4

Form 1

INFORMATION TO OBTAIN A SEARCH WARRANT
(Section 487 of the Criminal Code)

Canada,
Province of ....,
(territorial division).

This is the information of A.B., of .... In the said *(territorial division), (occupation)*, hereinafter called the informant, taken before me.

The informant says that *(describe things to be searched for and offence in respect of which search is to be made)*, and that he believes on reasonable grounds that the said things, or some part of them, are in the *(dwelling-house, etc.)* of C.D., of ...., in the said *(territorial division). (Here add the grounds of belief, whatever they may be).*

Wherefore the informant prays that a search warrant may be granted to search the said *(dwelling-house, etc.)* for the said things.

Sworn before me this ....day of
......................, A.D. ...., ...
at.. *(Signature of Informant)*
....
A justice of the Peace in and for
....

APPENDIX 5

SEARCH WARRANT INFORMATION CHECKLIST

Search warrants and seizures under warrants

1. Preparing an "Information to Obtain a Search Warrant" (Form 1)

1.1 General

- ✓ The purpose of an "Information to Obtain a Search Warrant" is to provide the information necessary to satisfy a Justice of the Peace or a Judge (Justice) that there are sufficient grounds to issue a warrant.

- ✓ The Information will be scrutinized carefully by a Justice and will be rejected if it is deficient. If the Justice misses an error in the information, a warrant issued on the basis of a faulty Information may be challenged in court and ruled invalid. Evidence collected pursuant to that warrant could become inadmissible in a prosecution.

- ✓ The Investigator has a duty to provide all material information, including considerations which might weigh against the issue of a warrant[1] and to swear under oath or solemn affirmation the information contained in the search warrant and to carry out the execution of the court order.

1.2 Form

- ✓ The Information is required to be in a form (Form 1, see example at Appendix 4). Some jurisdictions may have their own forms. This will be the responsibility of the *ad hoc* agent to obtain the appropriate documents.

1.3 Content

The Information must contain the following information:

- ✓ Identification of the Investigator (name, place of residence, and occupation, i.e. Investigator appointed pursuant to section 509 of the *Canada Elections Act*).

- ✓ If persons other than a Investigator are to be authorized by the warrant, their names and occupations should be specified as well as the reason for their presence at the search (e.g.

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[1] Purcell, R.F., Search Warrants: *Sufficiency of the Grounds of Belief*, pp. 15 and 16, RCMP Criminal Operations Branch, January 15, 1998.

Ms. Jane Smartz, computer analyst employed by the "ABC Computer Investigation Firm" who will conduct searches of computer databases). For police officers, it is only necessary to name the detachment or municipality (e.g. Members of RCMP....detachment or, members of Calgary City Police, etc.).

- ✓ **Place of application:** The province or territory within which the application is being made.
- ✓ **Territorial division:** The judicial district within which the Justice from whom the warrant is being requested has jurisdiction.
- ✓ **The offence:** Details of the violation or offence for which the items are being sought so that the suspect is aware of the reasons for the search. The provision(s) of the *Acts* which has/have been breached must be cited.

This part of the information should include:

a) a brief but complete description of the items sought. A degree of generality is acceptable, but vague "basket clause" statements such as "all other documents" are definitely not acceptable; and,
b) the relationship between the items sought and the offence.

- ✓ Statement of Belief: The Investigators must swear that they have reasonable grounds for believing and do believe that certain articles are in a place, and state the grounds for the belief.

Reasonable grounds for belief:

Outline the facts that give rise to the beliefs set out in the Information: **who, what, when, where and how.** The grounds should be factual and specific and should include details about the source of the information. Where the information is obtained from other persons, the Investigator must expressly state that he or she believes such information and provide the reason why he/she believes that person, i.e., previously reliable and corroborating evidence.

> **Note:** If a confidential informant is used, the reliability record, if known, must be set out. If there is none or it is not set out properly, then the information from that source amounts to mere rumour and cannot of itself amount to reasonable grounds.
>
> It is **not** sufficient for the informant to state the track record of the confidential source to be "proven reliability or known reliability". In the absence of details upon which the Justice can come to his/her own conclusion on this reliability factor, it can only be given weight as a mere rumour in the absence of further investigative information[2].

---

[2] *Supra*, footnote 1, at p. 13.

- ✓ **Location:** The exact address of the premises the Investigator wishes to search. Note any outside buildings or other units at the address, i.e. motor vehicles, etc., must also be specified. Only places named in the warrant can be searched.

- ✓ **Use of force:** If the use of force is anticipated, including force to break into locked buildings, this must be specifically stated with reasons for the need to use force. (A police officer should definitely be requested under these circumstances.)

- ✓ **Date and time of search:** The date and time of search must be included in the Information. The Justice may alter the time parameters of the search unless good reason can be provided for the time requested. Investigators must adhere rigidly to the date and time limit set for the search.

- ✓ **Request for authorization:** The Information should close with a request that a "Warrant to Search" (Form 5, Appendix 6) be issued authorizing the Investigator ("the undersigned"), any other properly designated Investigator and/or other named person(s) to enter and search the location and to seize the items specified.

2. Executing a Search Warrant[3]

2.1 General

A search warrant is "executed" when a Investigator acts on it and conducts a search. The manner in which the search was conducted may involve a challenge in court based on sections 8 and 24[4] of the *Charter*, with regards to the admissibility of evidence, if it has been obtained in a manner unauthorized in the warrant.

2.2 Planning

Determine what resources will be needed to perform the search:

- ✓ human resources required (designated on the warrant);
- ✓ equipment, e.g. camera, log-books, containers, labels, envelopes, etc.;
- ✓ best time to conduct the search (Search warrants usually have time parameters);
- ✓ coordinate in advance who will be doing what and when;

---

[3] The activities described reflect a major search. It is not known if Investigators will encounter such a situation but the steps can be adapted to fit the circumstances.

[4] Section 8: Everyone has the right to be secure against reasonable search or seizure.
Subsection 24(1): Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.
Subsection 24(2): Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

- ✓ team to arrive on the scene together.

Commence search when owner or person in authority is present.

- ✓ Keep the original warrant in your possession at all times, and produce it for examination by the owner of the property or person in authority;
- ✓ Provide a photocopy to the owner or person in authority;
- ✓ After introducing yourself and your reason for being there, set up a secure work site; i.e. a table in an area that can be kept secure for the protection of exhibits;
- ✓ Try to limit the number of people involved in the collection of exhibits. Consider having the exhibit person collect any evidence brought to the person's attention by other designated persons;
- ✓ If necessary, draw a floor plan and note sites where evidence is found;
- ✓ Keep detailed notes on seizures;
- ✓ Mark each seizure with date, time, initials of person who made the seizure and a unique identifying number.

2.3 What to seize

A Investigator is allowed to seize things referred to in the warrant as being the object of the search and seizure. In addition, section 489 of the *Criminal Code* allows for seizure of items not specifically mentioned in the warrant if the Investigator has reasonable grounds to believe that:

a) the things have been obtained by the commission of an offence against the *Acts*;
b) the things have been used in the commission of an offence against the *Acts*; or
c) the things will afford evidence in respect of an offence against the *Acts*.

2.4 Seizure should take place where

- ✓ A thing is required as evidence in court;
- ✓ There is a need to prevent further offences against the *Acts;*
- ✓ There is a need to prevent loss or destruction of evidence.

2.5 Seizure of documents

- ✓ The search plan should indicate what type of documents would be relevant as evidence;
- ✓ Original documents should be seized whenever possible. However, the owner or person in authority may require original documents to carry out legitimate business practices. Generally computer printout originals should be seized;
- ✓ Obtain the permission of the owner or person in authority to use their copying facilities. They are under no obligation to provide photocopying facilities. If obtaining copies is a problem, rent a portable copier;
- ✓ Documents, which might support a defence, should be copied even though they are not strictly relevant as evidence of the offence.

2.6 Recording procedure[5]

It is important to record all information concerning the seizure of documents in order to ensure their value as evidence. The following procedure is recommended:

- ✓ Each document should be sequentially numbered and initialed by the Investigator so that he or she may later identify it in court;
- ✓ One index should be used to list all documents seized. A copy of the index should be supplied to the owner or person in authority;
- ✓ Each document should be coded in the index with:
  - A unique number;
  - Information regarding the exact location and seizure;
  - Information as to who might have handled it or who might have been in charge of maintaining it at the site; and
  - The date and time of seizure;
- ✓ Where copies are seized, the original should be coded before the copy is made.

2.7 When the search and seizure is concluded

Following a seizure, a Investigator should, as soon as possible, inform the person who had possession of the thing prior to the seizure that:

- ✓ The Investigator believes that an offence under the *Acts* has occurred; and
- ✓ Specifically what items have been seized.

2.8 Cataloguing of seized items

- ✓ Make a ledger that contains a record of all seized items held in a particular storage spot;
- ✓ Index ledger with a unique number;
- ✓ Add name and signature of the Investigator to the records.

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[5] For more details, Investigators should refer to Chapter 9, section 4, *Procedures to ensure continuity of possession.*

3. After Search and Seizure

After a search and seizure, section 489.1 of the *Criminal Code* provides for certain statutory requirements that must be followed by either a peace officer or ***a person other than a peace officer***, including an investigator, who has seized anything under a warrant. These requirements are described in abbreviated terms below. Investigators should work closely with the assigned Legal Agent to ensure local procedures are followed and/or that the statutory requirements have not changed as a result of a higher court decision.

3.1 Restitution of property or report by peace officer (s. 489.1 *Criminal Code*)

> *489.1 (1)* ***Restitution of property or report by peace officer*** *– Subject to this or any other Act of Parliament, where a peace officer has seized anything under a warrant issued under this Act or under section 487.11 or 489 or otherwise in the execution of duties under this or any other Act of Parliament, the peace officer shall, as soon as is practicable,*
>
> *(a) where the peace officer is satisfied,*
>
> *(i) that there is no dispute as to who is lawfully entitled to possession of the thing seized, and*
> *(ii) that the continued detention of the thing seized is not required for the purposes of any investigation or a preliminary inquiry, trial or other proceeding,*
>
> *return the thing seized, on being issued a receipt therefor, to the person lawfully entitled to its possession and report to the justice who issued the warrant or some other justice for the same territorial division or, if no warrant was issued, a justice having jurisdiction in respect of the matter, that he has done so, or*
>
> *(b) where the peace officer is not satisfied as described in subparagraphs (a)(i) and (ii),*
>
> *(i) bring the thing seized before the justice referred to in paragraph (a), or*
> *(ii) report to the justice that he has seized the thing and is detaining it or causing it to be detained*
>
> *to be dealt with by the justice in accordance with subsection 490(1).*
>
> *(2)* ***Idem*** *– Subject to this or any other Act of Parliament, where a person, other than a peace officer, has seized anything under a warrant issued under this Act or under section 487.11 or 489 or otherwise in the execution of duties under this or any other Act of Parliament, that person shall, as soon as is practicable,*
>
> *(a) bring the thing seized before the justice who issued the warrant, or some other justice for the same territorial division or, if no warrant was issued, before a justice having jurisdiction in respect of the matter, or*
> *(b) report to the justice referred to in paragraph (a) that he has seized the thing and is detaining it or causing it to be detained,*
>
> *to be dealt with by the justice in accordance with subsection 490(1).*

3.2 Report to a Justice

Pursuant to subsection 489.1 (2) of the *Criminal Code*, after seizing items under a search warrant, the Investigator named in the Information must fill out a "Report to a Justice" form (Form 5.2, see Appendix 7) and return it to the Justice who issued the warrant, or another Justice for the same jurisdiction as soon as possible. The report should list the things seized and where they are being kept.

3.3 Detention of things seized - Limitation of detention period

The investigator who seized the items under a warrant is obliged to keep the items in a secure storage place to ensure he or she only has access for continuity of evidence. Under subsection 490(2), there is a time limitation of 3 months. Should the documents be required for a longer period a request must be made before a Justice having jurisdiction for an extension. (This would be the responsibility of the *ad hoc* agent retained by the Commissioner working with the Investigator who endorsed the warrant in the first instance.)

Subsection 490(1) describes the procedure to follow after an initial return or report has been made under subsection 489(2) of the *Criminal Code*. It contains twenty subsections that are not reproduced herein but refer to various scenarios that the Investigators should be aware of in the event that they are the informants in an application for a search warrant. As always the agent retained by the Commissioner would be responsible for ensuring the appropriate procedures are followed.

3.4 Continuity of Evidence[6]

The evidence must always be accounted for to ensure that tampering cannot be used as a defence.

4. Privilege

Investigators should be aware that while lawyers' offices are subject to search and seizure, they enjoy certain privileges with respect to documents for which a claim of solicitor-client privilege has been made.

The procedures to obtain a search warrant to search a lawyer's office and seize documents is fully set out in section 488.1 of the *Criminal Code* which Investigators should refer to if such a situation arises. It would be the responsibility of the *ad hoc* agent retained by the Commissioner to ensure the proper procedures are followed.

---

[6] *Supra*, footnote 3.

Appendix 6

Form 5
WARRANT TO SEARCH
(Section 487 of the *Criminal Code*)

Canada,
Province of …………………,
(territorial division).

To the peace officers in the said *(territorial division)* or to the *(name public officers)*:

Whereas it appears on the oath of A.B., of …………………….. that there are reasonable grounds for believing that *(describe things to be searched for an offence in respect of which search is to be made)* are in …………….. at …………………, hereinafter called the premises;

This is, therefore, to authorize and require you between the hours of *(as the justice may direct)* to enter into the said premises and to search for the said things and to bring them before me or some other justice.

Dated this ……………….. day of ……………… A.D. …………………., at ………………………..

………………………..……………
A Justice of the Peace in and for

…………………………………..…….

Appendix 7

Form 5.2
REPORT TO A JUSTICE
(Section 489.1 of the *Criminal Code*)

Canada,
Province of ....,
(territorial division).

To the justice who issued a warrant to the undersigned pursuant to section 256, 487 or 487.1 of the *Criminal Code (or another justice for the same territorial division or, if no warrant was issued, any justice having jurisdiction in respect of the matter).*

I, *(name of the peace officer or other person)* have *(state here whether you have acted under a warrant issued pursuant to section 256, 487 or 487.1 of the Criminal Code or under section 489 of the Code or otherwise in the execution of duties under the Criminal Code or another Act of Parliament to be specified)*

1. searched the premises situated at ....; and
2. seized the following things and dealt with them as follows:

Property Seized *(describe each thing seized)*	Disposition *(state, in respect of each thing seized, whether* *(a) it was returned to the person lawfully entitled to its possession, in which case the receipt therefor shall be attached hereto, or* *(b) it is being detained to be dealt with according to law, and the location and manner in which, or where applicable, the person by whom it is being detained).*
1.	....
2.	....
3.	....
4.	....

In the case of a warrant issued by telephone or other means of telecommunication, the statements referred to in subsection 487.1(9) of the *Criminal Code* shall be specified in the report.

Dated this .... day of .... A.D. ...., at ....

....
Signature of peace officer or other person

Appendix 8

SECTIONS 50 TO 54 OF THE *PARLIAMENT OF CANADA ACT*

DIVISION D

BOARD OF INTERNAL ECONOMY

Establishment and Organization

Board established

50. (1) There shall be a Board of Internal Economy of the House of Commons, in this section and sections 51 to 53 referred to as "the Board", over which the Speaker of the House of Commons shall preside.

Composition of Board

(2) The Board shall consist of the Speaker, two members of the Queen's Privy Council for Canada appointed from time to time by the Governor in Council, the Leader of the Opposition or the nominee of the Leader of the Opposition and other members of the House of Commons who may be appointed from time to time as follows:

(a) if there is only one party in opposition to the government that has a recognized membership of twelve or more persons in the House of Commons, the caucus of that party may appoint two members of the Board and the caucus of the government party may appoint one member of the Board; and

(b) if there are two or more parties in opposition to the government each of which has a recognized membership of twelve or more persons in the House of Commons,

(i) the caucus of each of those parties in opposition may appoint one member of the Board, and

(ii) the caucus of the government party may appoint that number of members of the Board that is one less than the total number of members of the Board who may be appointed under subparagraph (i).

(3) [Repealed, 1997, c. 32, s. 1]

Speaker to inform of appointments

(4) The Speaker shall inform the House of Commons of any appointment made to the Board, on any of the first fifteen days on which the House is sitting after the appointment is made.

Oath or affirmation

(5) Every member of the Board shall, as soon as practicable after becoming a member of the Board, take before the Clerk of the House of Commons an oath or affirmation of fidelity and secrecy in the form set out in Form 3 of the schedule.

Scope

(6) For greater certainty, the oath or affirmation referred to in subsection (5) only relates to matters of security, employment and staff relations, tenders and investigations in relation to a member of the House of Commons and nothing in subsection (5) shall be construed as preventing the communication of any information relating to other matters to a party caucus.

Clerk is Secretary

51. The Clerk of the House of Commons is the Secretary to the Board.

R.S., 1985, c. P-1, s. 51; R.S., 1985, c. 42 (1st Supp.), s. 2; 1991, c. 20, s. 2.

Quorum

52. (1) Five members of the Board, of whom one shall be the Speaker, constitute a quorum.

Death, disability or absence of Speaker

(2) In the event of the death, disability or absence of the Speaker, five members of the Board, of whom one shall be a member of the Queen's Privy Council for Canada appointed under subsection 50(2), constitute a quorum. The members present shall designate a member from among themselves to chair the meeting.

R.S., 1985, c. P-1, s. 52; R.S., 1985, c. 42 (1st Supp.), s. 2; 1991, c. 20, s. 2; 1997, c. 32, s. 2.

Emergencies

52.1 (1) Where the Speaker deems that there is an emergency, the Speaker may exercise any power of the Board.

Report of decision

(2) The Speaker shall report to the Board any decision made under subsection (1) at the meeting of the Board immediately following the decision.

1991, c. 20, s. 2.

Functions of Board

Capacity

52.2 (1) In exercising the powers and carrying out the functions conferred upon it pursuant to this Act, the Board has the capacity of a natural person and may

(a) enter into contracts, memoranda of understanding or other arrangements in the name of the House of Commons or in the name of the Board; and

(b) do all such things as are necessary or incidental to the exercising of its powers or the carrying out of its functions.

Immunity

(2) Where a member of the Board participates in the exercise of the powers or the carrying out of the functions of the Board, the member shall not be held personally liable for the actions of the Board.

1991, c. 20, s. 2.

Function of Board

52.3 The Board shall act on all financial and administrative matters respecting

(a) the House of Commons, its premises, its services and its staff; and

(b) the members of the House of Commons.

1991, c. 20, s. 2.

Estimate to be prepared

52.4 (1) Prior to each fiscal year the Board shall cause to be prepared an estimate of the sums that will be required to be provided by Parliament for the payment of the charges and expenses of the House of Commons and of the members thereof during the fiscal year.

Estimate to be included in government estimates and tabled

(2) The estimate referred to in subsection (1) shall be transmitted by the Speaker to the President of the Treasury Board who shall lay it before the House of Commons with the estimates of the government for the fiscal year.

1991, c. 20, s. 2.

By-laws

By-laws

52.5 (1) The Board may make by-laws

(a) respecting the calling of meetings of the Board and the conduct of business at those meetings;

(b) governing the use by members of the House of Commons of funds, goods, services and premises made available to them for the carrying out of their parliamentary functions;

(c) prescribing the terms and conditions of the management of, and accounting for, by members of the House of Commons, of funds referred to in paragraph (b) and section 54; and

(d) respecting all such things as are necessary or incidental to the exercise of its powers and the carrying out of its functions.

Speaker to table by-laws

(2) The Speaker shall table before the House of Commons the by-laws made under this section on any of the first thirty days after the making thereof.

Speaker to make by-laws available

(3) When the House of Commons is not sitting, the Speaker shall cause the by-laws made under this section to be deposited with the Clerk of that House and such by-laws shall thereupon be deemed to have been tabled before the House of Commons.

By-laws not statutory instruments

(4) By-laws made under this section shall be deemed not to be statutory instruments for the purposes of the Statutory Instruments Act.

1991, c. 20, s. 2.

Opinions

Exclusive authority

52.6 (1) The Board has the exclusive authority to determine whether any previous, current or proposed use by a member of the House of Commons of any funds, goods, services or premises made available to that member for the carrying out of parliamentary functions is or was proper, given the discharge of the parliamentary functions of members of the House of Commons, including whether any such use is or was proper having regard to the intent and purpose of the by-laws made under subsection 52.5(1).

Members may apply

(2) Any member of the House of Commons may apply to the Board for an opinion with respect to any use by that member of funds, goods, services or premises referred to in subsection (1).

1991, c. 20, s. 2.

Opinion during investigation

52.7 (1) During any investigation by a peace officer in relation to the use by a member of the House of Commons of funds, goods, services or premises referred to in subsection 52.6(1), the peace officer may apply to the Board for, or the Board may, on its own initiative, provide the peace officer with, an opinion concerning the propriety of such use.

Opinion to be considered

(2) Where an opinion is provided to a peace officer pursuant to subsection (1) and where an application for a process is made to a judge, the judge shall be provided with the opinion and shall consider it in determining whether to issue the process.

Definition of "process"

(3) For the purposes of this section, "process" means

(a) an authorization to intercept a private communication under section 185,

(b) an order for a special warrant under section 462.32,

(c) an order for a search warrant under section 487,

(d) a restraint order under section 462.33,

(e) the laying of an information under section 504 or 505,

(f) a summons or an arrest warrant under section 507, or

(g) the confirmation of an appearance notice, promise to appear or recognizance under section 508

of the *Criminal Code*.

Issuance of process by judge

(4) The issuance of a process referred to in paragraphs (3)(c), (e), (f) and (g) that is based on the use by a member of the House of Commons of any funds, goods, services or premises made available to that member for the carrying out of parliamentary functions shall be authorized by a judge of a provincial court within the meaning of section 2 of the *Criminal Code*.

1991, c. 20, s. 2.

General opinions

52.8 In addition to issuing opinions under section 52.6, the Board may issue general opinions regarding the proper use of funds, goods, services and premises within the intent and purpose of the by-laws made under subsection 52.5(1).

1991, c. 20, s. 2.

Comments may be included

52.9 (1) The Board may include in its opinions any comments that the Board considers relevant.

Publication of opinions

(2) Subject to subsection (3), the Board may publish, in whole or in part, its opinions for the guidance of members of the House of Commons.

Privacy and notification

(3) Subject to subsection (4), the Board shall take the necessary measures to assure the privacy of any member of the House of Commons who applies for an opinion and shall notify the member of its opinion.

Making opinions available

(4) For the purposes of subsection 52.7(1), the Board may, if it considers it appropriate to do so, make any of its opinions, including opinions issued under section 52.6, available to the peace officer.

1991, c. 20, s. 2.

In case of dissolution

53. On a dissolution of Parliament, every member of the Board and the Speaker and Deputy Speaker shall be deemed to remain in office as such, as if there had been no dissolution, until their

replacement.
R.S., 1985, c. P-1, s. 53; R.S., 1985, c. 42 (1st Supp.), s. 2; 1991, c. 20, s. 2.

53.1 [Repealed, 1991, c. 20, s. 2]

Expenditure

54. All funds, other than those applied toward payment of the salaries and expenses of Parliamentary Secretaries, expended under Part IV in respect of the House of Commons shall be expended and accounted for in the same manner as funds for defraying the charges and expenses of the House and of the members thereof are to be expended and accounted for pursuant to this Division.

R.S., 1985, c. P-1, s. 54; 1991, c. 20, s. 2.

Appendix 9

SECTION 8 OF THE *PRIVACY ACT*

Disclosure of personal information
8. (1) Personal information under the control of a government institution shall not, without the consent of the individual to whom it relates, be disclosed by the institution except in accordance with this section.
Where personal information may be disclosed
(2) Subject to any other Act of Parliament, personal information under the control of a government institution may be disclosed
(a) for the purpose for which the information was obtained or compiled by the institution or for a use consistent with that purpose;
(b) for any purpose in accordance with any Act of Parliament or any regulation made thereunder that authorizes its disclosure;
(c) for the purpose of complying with a subpoena or warrant issued or order made by a court, person or body with jurisdiction to compel the production of information or for the purpose of complying with rules of court relating to the production of information;
(d) to the Attorney General of Canada for use in legal proceedings involving the Crown in right of Canada or the Government of Canada;
(e) to an investigative body specified in the regulations, on the written request of the body, for the purpose of enforcing any law of Canada or a province or carrying out a lawful investigation, if the request specifies the purpose and describes the information to be disclosed;
(f) under an agreement or arrangement between the Government of Canada or an institution thereof and the government of a province, the government of a foreign state, an international organization of states or an international organization established by the governments of states, or any institution of any such government or organization, for the purpose of administering or enforcing any law or carrying out a lawful investigation;
(g) to a member of Parliament for the purpose of assisting the individual to whom the information relates in resolving a problem;
(h) to officers or employees of the institution for internal audit purposes, or to the office of the Comptroller General or any other person or body specified in the regulations for audit purposes;
(i) to the National Archives of Canada for archival purposes;
(j) to any person or body for research or statistical purposes if the head of the government institution
(i) is satisfied that the purpose for which the information is disclosed cannot reasonably be accomplished unless the information is provided in a form that would identify the individual to whom it relates, and
(ii) obtains from the person or body a written undertaking that no subsequent disclosure of the information will be made in a form that could reasonably be expected to identify the individual to whom it relates;
(k) to any aboriginal government, association of aboriginal people, Indian band, government institution or part thereof, or to any person acting on behalf of such government, association, band, institution or part thereof, for the purpose of researching or validating the claims, disputes

or grievances of any of the aboriginal peoples of Canada;
(l) to any government institution for the purpose of locating an individual in order to collect a debt owing to Her Majesty in right of Canada by that individual or make a payment owing to that individual by Her Majesty in right of Canada; and
(m) for any purpose where, in the opinion of the head of the institution,
(i) the public interest in disclosure clearly outweighs any invasion of privacy that could result from the disclosure, or
(ii) disclosure would clearly benefit the individual to whom the information relates.
Personal information disclosed by National Archives
(3) Subject to any other Act of Parliament, personal information under the custody or control of the National Archivist of Canada that has been transferred to the National Archivist by a government institution for archival or historical purposes may be disclosed in accordance with the regulations to any person or body for research or statistical purposes.
Copies of requests under paragraph (2)(e) to be retained
(4) The head of a government institution shall retain a copy of every request received by the government institution under paragraph (2)(e) for such period of time as may be prescribed by regulation, shall keep a record of any information disclosed pursuant to the request for such period of time as may be prescribed by regulation and shall, on the request of the Privacy Commissioner, make those copies and records available to the Privacy Commissioner.
Notice of disclosure under paragraph (2)(m)
(5) The head of a government institution shall notify the Privacy Commissioner in writing of any disclosure of personal information under paragraph (2)(m) prior to the disclosure where reasonably practicable or in any other case forthwith on the disclosure, and the Privacy Commissioner may, if the Commissioner deems it appropriate, notify the individual to whom the information relates of the disclosure.
Definition of "Indian band"
(6) In paragraph (2)(k), "Indian band" means
(a) a band, as defined in the *Indian Act*;
(b) a band, as defined in the *Cree-Naskapi (of Quebec) Act*, chapter 18 of the Statutes of Canada, 1984;
(c) the Band, as defined in the *Sechelt Indian Band Self-Government Act*, chapter 27 of the Statutes of Canada, 1986; or
(d) a first nation in Schedule II to the *Yukon First Nations Self-Government Act*.
(7) The expression "aboriginal government" in paragraph(2)(*k*) means Nisga'a Government, as defined in the Nisga'a Final Agreement given effect by the Nisga'a Final Agreement Act.

Legislative History: R.S., 1985, c. P-21, s. 8; R.S., 1985, c. 20 (2nd Supp.), s. 13, c. 1 (3rd Supp.), s. 12; 1994, c. 35, s. 39, 2000, c. 7, s. 26.

Elections Canada

CHAPTER 9

COLLECTION, USE AND PRESERVATION OF EVIDENCE

Commissioner of Canada Elections

January 2004

COLLECTION, USE AND PRESERVATION OF EVIDENCE

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1. INTRODUCTION

This chapter provides general information and direction to Investigators and other persons involved in the handling of evidence and court exhibits.

2. POLICY

The evidence collected during an investigation must not only meet the standards of the Office of the Commissioner of Canada Elections, but also comply with requirements concerning the proof of continuity of possession and the admissibility of evidence.[1]

The onus of proving that these requirements have been met is the responsibility of everyone involved in the process of collection, use and preservation of evidence.

Investigators and persons involved in the handling process of documentary evidence and court exhibits must be thoroughly familiar with the following procedures for the control of evidence.

3. PROCEDURES FOR BORROWING DOCUMENTS

In the course of an investigation, Investigators should attempt to obtain all necessary documents and records related to the investigation of an alleged offence in a single request and during the same interview[2] from the source or person in possession of the documentary evidence, or from the source or person who has the authority to provide access to the personal information data banks.[3] This approach favourably predisposes people to a request to produce documents and to minimize the risk of the possible destruction of evidence.

Care must be taken with borrowed documents or material. It is essential that they be kept in the same condition as received. Investigators should use photocopies as working documents and preserve the originals intact. If an individual is hesitant to hand over original documents, Investigators should endeavour to have a certified true copy made.[4]

---

[1] Refer to sections 24 to 31.8 of the *Canada Evidence Act* for more information on the admissibility of various documents for evidentiary purposes and to amendments to that Act adopted in 2000, c. 5, ss. 52-57, dealing with the admissibility of electronic evidence.

[2] Refer to Chapter 11 – *Interview techniques*, for more information on the preparation of interviews.

[3] Where access to personal information or documents from a suspect is required, refer to Chapter 7 – *Official cautions*, and Chapter 8 – *Access to records, books and documents*.

[4] *Supra*, footnote 1.

Investigators should prepare a detailed report of the interview[5] as soon as possible after taking possession of documents. It is important to enter only the specific documents with which the provider of the documents is personally familiar. Investigators should also include the age of the provider, the apparent state of health of the provider and the relationship of the provider with the alleged offender, if any. Investigators should state their opinion as to the authenticity of the documents, the reliability of the information contained therein, the assessment of the credibility of the provider of the documents and the motives for producing or withholding the documents.

4. PROCEDURES TO ENSURE CONTINUITY OF POSSESSION

In order to establish the continuity of possession, Investigators must first adequately describe the evidence and information collected, so that it may not be mistaken for something else.

4.1 Identification requirements

Regardless of whether documentary evidence was borrowed or seized under a court warrant[6], Investigators are responsible for the proper identification of all documentary evidence and information collected. In particular, they should process documents as follows:

a) Evidence contained in envelopes, boxes and electronic devices

- Record the file number of the investigation on the document and/or container;
- state in the investigation report the exact location, the computer identifiers or data base descriptions, and specific address where each document was seized or obtained, and from whom;
- describe each document and reference number;
- identify the Investigator taking possession of the documents;
- record the date and time of the receipt or seizure of the documents;
- prepare an exhibit report in duplicate[7] and give a signed copy to the person who provided access to the documents.

---

[5] Refer to Chapter 12 – *Investigation report format*, for more information on the other essential reporting requirements.

[6] Refer to Chapter 8 – *Access to records, books and documents* for more information on search and seizure warrants.

[7] See Appendix 1 — Exhibit report, at the end of this chapter.

b) Evidence and other information in records

In addition to the above requirements, Investigators must:

- provide the identity and address of all persons who identified each separate record or information and retrieved the information from the computer or data base;
- identify the person who made entries in the record, their electronic password and ask the person to initial and date the documents in question;
- determine who has knowledge of the preparation, storage in hard or soft copy and use of the records and could therefore be a competent witness in any further investigation or court proceedings;
- advise the provider that the documents will be returned once the matter has been resolved;
- electronic evidence should only be handled by the electronic expert providing assistance.

4.2 Safeguarding requirements

Investigators are also responsible for the safekeeping and the protection of all information and evidence collected during the course of an investigation; in particular, they should:

- make photocopies of the information and evidence and retain a working copy for any possible follow-up enquiries, as directed by the Chief Investigator or Senior Counsel to the Commissioner;
- seal the boxes or other receptacles containing the original documents and records which were seized or borrowed;
- prepare an inventory list and indicate, at the top of each page, the specific location where the information and documentary evidence is stored or locked in a restricted/controlled access area, pending transmission to the Office of the Commissioner;
- electronic evidence seized or obtained by experts assisting in the execution of a warrant will be retained by them for analysis and eventual presentation in court.

4.3 Transmission requirements

As a rule, Investigators should keep all original documents in the manner described in paragraph 4.2 above, unless instructed by the Chief Investigator or Senior Counsel to the Commissioner to forward them to the Commissioner.

Once instructed by the Chief Investigator or Senior Counsel to the Commissioner to forward original documents from an investigation, Investigators should, using Priority Post, send all information and documentary evidence collected to the Office of the Commissioner to the attention of the designated person. Investigators must retain the waybill or other proof of mailing issued by the Carrier Company.[8]

4.4 Storage requirements

The documentary evidence shall be provided adequate protection in a secure fireproof exhibit vault.

4.5 Access to the exhibit vault

Chief Investigator is the custodian of evidentiary files and court exhibits and is responsible for their control, protection and maintaining an access log.

4.6 Access log to the exhibit vault

Each time the vault is opened, an entry must be made in the log showing the name of authorised personnel having access, identifying the specific documents handled or removed from the exhibit vault, and the reason(s).

4.7 Exhibit vault combination lock

Only the custodian shall know the combination of an exhibit vault. In case of emergency during the absence of the custodian, the Financial and Administrative Officer, Senior Counsel to the Commissioner or the Commissioner may open a sealed and taped envelope initialled by the custodian located in the controlled vault, which contains the combination of the exhibit vault. In such an instance, a witness must also sign the access log of the exhibit vault. In such circumstances, the combination to the exhibit vault will be changed afterwards.

---

[8] Refer to Chapter 13 – *Protection and transmission of correspondence*, for more information on this matter.

4.8 Register of inventory

The custodian shall maintain a separate register containing an accurate and complete list of all exhibits and evidentiary files stored in an exhibit vault. The master copy will be kept in the exhibit vault.

4.9 Movement of exhibits

Each time evidence or exhibits are handled (in and out of the exhibit vault), in transit between authorised personnel for disclosure purposes or court proceedings, an entry must be made on the control sheet for the movement of exhibits attached to each specific record. A duplicate receipt will be prepared and a signed copy returned to the custodian after delivery of the records.

4.10 Evidentiary files

Correspondence dealing with evidence and exhibits is kept in a hard copy file, separate from the complaint file.

5. PROCEDURES FOR RETURNING EVIDENCE AND EXHIBITS

After the Chief Investigator has completed the inventory of the seized documents and in the event of a prosecution, a copy of the inventory list will be transmitted to the legal agent hired by the Commissioner. Request will be made to the court for the return of the documents to the owner.

After the end of court proceedings, Investigators may be instructed to return documents remaining in their custody, or in the Office of the Commissioner, to the accused or representative. In such circumstances, Investigators must obtain from the accused or representative a signed receipt indicating the documents, which were returned and leave a copy with that person. The other copy must be sent to the Chief Investigator so that the register of the evidentiary files can be amended accordingly.

Elections Canada

Commissioner of Canada Elections
Commissaire aux élections fédérales

APPENDIX 1

EXHIBIT REPORT **RAPPORT SUR LES PIÈCES À CONVICTION**

File Number – Numéro do dossier	Caption – Rubrique
Seized/obtained from – Saisies/obtenues de	
Date seized/obtained – Date saisies/obtenues	Exhibits seized/obtained by – Pièces à conviction saisies/obtenues par
Location – Endroit	
Authority by which seizure was made or exhibits obtained – Autorisation en vertu de laquelle la saisie a été effectuée ou les pièces furent obtenues	

Consecutive Item No. No. de pièce consécutif	Description of Exhibits Description des pièces à conviction

CERTIFIED CORRECT – CERTIFIÉ CONFORME Signature of Investigator – Signature de l'enquêteur	Date	Page of/de

EXHIBIT REPORT **RAPPORT SUR LES PIÈCES À CONVICTION**

Consecutive Item No. No. de pièce consécutif	Description of Exhibits Description des pièces à conviction	File Number – Numéro du dossier Date seized/obtained – Date saisies/obtenues

CERTIFIED CORRECT – CERTIFIÉ CONFORME Signature of Investigator – Signature de l'enquêteur	Date	Page of/de

Elections Canada

CHAPTER 10

INSPECTION, REVIEW AND ANALYSIS OF DOCUMENTS

Commissioner of Canada Elections

January 2004

INSPECTION, REVIEW AND ANALYSIS OF DOCUMENTS

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1. INTRODUCTION

This chapter provides general information and direction to the Chief Investigator and Senior Counsel to the Commissioner for the inspection, review and analysis of documents[1] used for a preliminary assessment of alleged infractions or during an investigation under the *Acts*.[2]

2. POLICY

Where the preliminary assessment of an alleged infraction concludes that the inspection, review and analysis of documentary records is necessary, the report to the Commissioner of Canada Elections (the Commissioner) should document clearly all available facts, the supporting rationale and the specific objectives of this method of investigation.

Counsel to the Commissioner or a designated Investigator may undertake the inspection, review and analysis of documentary records from Elections Canada for the purposes of a preliminary assessment of alleged infractions.[3] Following the approval of an investigation[4] by the Commissioner, election documents[5] may be requested and inspected by the designated Investigator or Counsel to the Commissioner.

Where pursuant to the provisions of subsection 540(4) of the *Canada Elections Act*, the inspection of special ballots and related election documents is authorised by the Commissioner, the designated Investigator will, while inspecting documents, maintain and aid in maintaining the secrecy of the vote.

3. FOCUS OF INSPECTION

The nature of the specific elements of the alleged offences and the category of documentary records related to those offences, will determine the inspection focus and the approach. The following criteria[6] should be considered in conducting the inspection, review and analysis of documentary records:

---

[1] Refer to Chapter 8 – *Access to records, books and documents*, for the definitions and list of various documentary records, which may be inspected.

[2] For the purpose of this manual, "*Acts*" include the *Canada Elections Act* and the *Referendum Act*.

[3] Refer to Chapter 3 – *Preliminary assessment of alleged infractions*, for more information on this matter.

[4] Refer to Chapter 4 – *Investigation policy*, for more information on the "Threshold Test and Standards" of investigation.

[5] See section 2 of the *Canada Elections Act* and *supra*, footnote 1.

[6] Refer to Chapter 6 – *Election financing*, for other essential requirements related to assistance to the Election Financing Directorate during the audit process.

a) whether the recorded information is sufficient, reliable and substantial enough to either prove or refute the allegations of the complainant;

b) whether the information recorded therein complies with the relevant provisions of the *Acts,* with the requirements, directives and instructions issued by Elections Canada to Election Officers,[7] political parties and their electoral district associations, third parties, candidates, nomination and leadership contestants, auditors, chief agents, financial agents and official agents;

c) whether the transparency of the transactions of payments and deposits is adequately validated or supported whenever required by vouchers, invoices, receipts, cancelled cheques, accounting books and bank account statements;[8]

d) whether the recorded information is sufficiently detailed and accurate to validate the legitimacy of the alleged transactions; for instance, adequate descriptive information concerning the items and particulars of the transactions, names and addresses of the parties involved, dates of the order, delivery, periods of consumption and use of the goods and services;

e) whether the recorded information cross-matches or corresponds with other related information from documentary records and available sources of information;

f) whether any reconciliation took into account entries, deletions and corrections;

g) whether there are explanations for apparent omissions, discrepancies, anomalies or irregularities;

h) whether any records appear to contain any false, deceptive or misleading information;

i) whether the documents were signed by the authorised person;

j) whether there exists reasonable grounds to suspect any recorded information including signatures may have been written by someone else.

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[7] See subsection 22(1) of the *Canada Elections Act* for the definition and list of "election officers".

[8] See subsections 437(1), 435.21 and 478.12, as well as subsections 451, 435.3(3) and 478.23(3) of the *Canada Elections Act*.

3.1 Report requirements

Inspection findings and recommendations to the Commissioner should be documented in accordance with policies and procedures described in Chapter 3 – *Preliminary assessment of alleged infractions*, including whether further investigation or administrative action should be considered prior to closing the complaint file or initiating legal proceedings such as entering into a compliance agreement[9] or laying an information.[10]

4. PROCEDURES TO OBTAIN ACCESS TO ELECTION DOCUMENTS

Where pursuant to subsection 540(4) of the *Canada Elections Act*, the Commissioner authorised the inspection of election documents,[11] a written request will be provided by Chief Investigator to the Head of the Distribution Centre, Elections Canada, identifying the members of the Commissioner's staff authorised to conduct such inspections.

It is the responsibility of the Chief Investigator to prepare a separate written request for each investigation to the Distribution Centre, containing the list and description of election documents,[12] which are required for inspection.

5. PROCEDURES FOR THE INSPECTION, REVIEW AND ANALYSIS OF ELECTION DOCUMENTS RELATED TO SPECIAL VOTING RULES

It is the responsibility of all personnel involved in the handling of election documents to safeguard and control evidence, which may be used in court proceedings.[13] In particular, support staff should ensure that election documents[14] received from the Distribution Centre have been properly accounted for before the process of inspection is conducted by the Chief Investigator or the Assistant Chief Investigators.

In case of a spoiled special ballot, that is a ballot deemed to be a spoiled special ballot for reasons found in subsection 269(1) of the *Act*, a verification of the related election documents should first be completed prior to the actual inspection of the spoiled special ballot. This may provide additional and important investigation leads impacting on the decision, or the manner to proceed for the inspection of spoiled special ballots.

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[9] Refer to Chapter 15 – *Compliance agreements*, for more information on the factors and criteria, which must be considered.

[10] Refer to Chapter 17 – *The decision to prosecute*, for more information on the factors, which must be considered.

[11] *Supra*, footnote 1.

[12] *Supra*, footnote 1.

[13] Refer to Chapter 9 – *Collection, use and preservation of evidence*, for more information on the procedures to follow.

[14] *Supra*, footnote 1.

6. SAFEGUARDS AND METHODOLOGY FOR THE INSPECTION OF SPOILED SPECIAL BALLOTS

Investigators involved in the inspection of spoiled special ballots shall adhere to the following methodology:

a) the required inspection should be conducted in an office behind a locked door, free of any other material, files and documents which are not related directly to the specific inspection; the purpose of this approach eliminates any possibility of mixing the information and evidence with other unrelated material, and to ensure the admissibility of evidence in future court proceedings;

b) each outer envelope shall be opened individually and a reference code, known only by the Chief Investigator and the Assistant Chief Investigators, shall be placed on the outer envelope so that they can match each outer envelope with its content;

c) each inner envelope shall then be opened individually and the reference code shall be placed on the inner envelope to associate that inner envelope with the outer envelope from which it was removed;

d) each special ballot then shall be marked with the reference code to associate that particular ballot with the associated inner and outer envelopes;

e) the inspection process shall continue until all spoiled ballots are inspected;

f) in the process of inspection, the Chief Investigator and an assistant shall be the only persons to have the ability to identify for whom the elector cast his spoiled special ballot;

g) in order to minimise the extent of the violation to the right to secrecy of the votes, the Chief Investigator shall restrict communicating any information, with respect to the manner in which a ballot paper has been marked, to the Investigators where required for the purpose of investigations, Senior Counsel to the Commissioner, Commissioner, legal agent retained in a prosecution and, if directed to do so, opposing counsel and the court;

h) after the completion of the inspection, the special ballots shall be sealed in individual envelopes which then will be placed in a second sealed envelope, initialled and dated by the Chief Investigator and remain in an exhibit vault[15] under the custody of the Chief Investigator until completion of the investigation or prosecution of any offences arising therefrom;

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[15] *Supra*, footnote 1.

i) the original of all other election documents not necessary or not considered to be documentary evidence shall be photocopied and retained on file for future reference purposes prior to returning them to Elections Canada's Distribution Centre accompanied by a receipt in duplicate.

7. REPORTING REQUIREMENTS

Once the results of the inspection of election documents have been assessed, inspection findings are reported to Senior Counsel to the Commissioner and to the Commissioner indicating whether:

a) any votes that should have been cast and counted were not cast and counted as a result of any suspicious or illegal activity by someone who acted without any excuse;

b) the recorded information or documentary evidence is sufficient, reliable and substantial enough to prove that someone committed an offence or was involved in an illegal activity;

c) further investigation or administrative action should be considered prior to closing the file or initiating legal proceedings.[16]

In order to protect the secrecy and privacy of the votes, where there is a need to document for whom an elector cast a ballot, only one copy of the inspection report documenting such findings will be prepared and retained in the exhibit vault.

8. RETURN OF ELECTION DOCUMENTS

At the end of the investigation or court proceedings, the original election documents[17] are to be returned to the Head of Elections Canada's Distribution Centre, unless otherwise instructed.

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[16] *Supra*, footnote 4.

[17] *Supra*, footnote 1.

Elections Canada

CHAPTER 11

INTERVIEW TECHNIQUES

Commissioner of Canada Elections

January 2004

INTERVIEW TECHNIQUES

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1. INTRODUCTION

This chapter provides direction, general information and guidance to Investigators in the preparation and conduct of interviews for the purpose of investigations carried out[1] at the request of the Commissioner of Canada Elections (the Commissioner).

Where an interview involves a suspect, this chapter should be read in conjunction with chapters 7 and 8 for complementary direction on the protection of rights guaranteed under the *Canadian Charter of Rights and Freedoms* (the *Charter*).

2. POLICY

Investigators are responsible for ensuring that they adequately prepare for each interview. They must also exercise careful judgement in deciding on the most appropriate and effective techniques for the conduct of interviews, having regard to the ethical obligations to act with dignity, fairness, moderation, thoroughness and political impartiality.

Investigators must avoid personal or private discussions with interviewees which would bring into disrepute the administration of justice, and refrain from asking questions solely to embarrass, insult, abuse, belittle or demean an individual.

3. PURPOSE OF INTERVIEW

An interview is primarily a process to gather information and evidence. It is essentially an oral examination, face to face, to ascertain facts described in section 4 of this chapter, upon which further assessment, action, enforcement or compliance decisions can be made by the Commissioner.

4. WHEN AND WHY INTERVIEWS ARE UNDERTAKEN

Prior to an interview, Investigators should ensure that all available avenues and sources of information are explored in order to obtain the relevant facts which are germane to the preparation and conduct of the interview. Interviewing is but one method of ascertaining the facts. The conduct of interviews and other investigative methods should be designed to assist the Commissioner in reaching decisions.

Depending on the instructions issued by the Commissioner, Chief Investigator or Senior Counsel to the Commissioner, interviews can also serve several purposes including: general fact-finding, obtaining the clarification and elaboration of facts from a witness,[2] corroboration of facts from a complainant or obtaining admissible evidence from a person who may have been involved in an offence under the *Acts*.[3]

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[1] Refer to Chapter 5 – *Direction and control of investigation*, for more information on the work assignment instructions and focus of interviews which may be assigned to Investigators.

Where Investigators are simply requesting general information from third parties, a telephone call or a letter may suffice and be more expedient.[4] Where, however, there exist reasonable grounds to suspect that someone committed an offence, the interview should be conducted in person.[5]

Personal interviews allow Investigators to assess the credibility of a witness[6] and the reliability of documentary evidence,[7] oral information and facts. The Investigator's presence also promotes confidence and candour on the part of the person interviewed. A personal interview may also promote a better relationship between an Investigator and an individual, facilitating any follow-up conversations or inquiries by telephone.[8]

5. IMPROPER ACTIVITIES

Investigators must be vigilant and reasonable when conducting interviews. They are expected to be thoroughly familiar with the policies and procedures laid out in chapters 7 and 8 concerning the rights protected under the *Canadian Charter of Rights and Freedoms*. Investigators should not:

a) interview after business hours, when a more convenient appointment can be arranged;

b) conduct an interview in a bar if not absolutely necessary;

c) interview a minor without the presence of a responsible relative or legal guardian;

d) interview alone a person of the opposite sex in a secluded area;

e) use any unethical, coercive or abusive methods;[9]
f) interview in the Investigator's private vehicle.

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[2] Refer to Chapter 7 – *Official cautions*, for the definition of "witness".

[3] For the purpose of this manual, "*Acts*" include the *Canada Elections Act* and the *Referendum Act*.

[4] Refer to section 16 of this chapter for more information on the factors to assess when considering a telephone interview.

[5] *Supra*, footnote 2, for the definition of "suspect".

[6] *Supra*, footnote 2.

[7] Refer to Chapter 8 – *Access to records, books and documents*, for more information on this matter.

[8] *Supra*, footnote 4.

[9] *Supra*, footnote 2; evidence obtained in a manner that infringed or denied *Charter* protected rights may be found inadmissible by the court.

Where an interview is transferred to another location, Investigators should ensure that witnesses come on their own volition and understand that they are not being detained. This should be noted on the interview records.

Even though Investigators are empowered to conduct interviews[10] pursuant to an investigation, they cannot compel anyone to answer. They must, generally speaking, rely on gentle persuasion, effective inter-personal skills and professional experience to obtain cooperation.

In interviewing a suspect,[11] Investigators must be wary of any conduct, which could be viewed as oppressive or as offering any perceived inducements or favours in exchange for their cooperation. The existence of either can affect the admissibility of any relevant evidence in court because of doubts concerning the voluntariness of such evidence.[12]

6. TYPES OF INTERVIEWS

The degree of cooperation that may be expected from individuals will vary. Factors, which may affect the extent of cooperation from interviewees, include:

a) the nature of the allegations from the complainant;

b) the degree to which knowledge, motive and intent forms part of the alleged offence;[13]

c) the extent of potential legal or criminal liability;

d) the extent and nature of any previous contact with Elections Canada officials or the Office of the Commissioner.

Witnesses will usually cooperate although some individuals may be reticent to discuss matters related to close associates, friends or relatives, or to participate in any form of government investigation. Therefore, Investigators should be mindful of the need to assess carefully the motives, bias and attitudes, the credibility and reliability of every interviewee, and to document their findings and observations as objectively as possible in an assessment report.[14]

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[10] Refer to Chapter 2 – *Qualifications, duties and responsibilities of Investigators*, for more information on the limits of the powers of Investigators.

[11] *Supra*, footnote 2.

[12] *Supra*, footnote 2.

[13] Refer to section 8 of the *Criminal Code*. Some categories of offences are open to a *due diligence defence* when the defence can prove the accused took all reasonable care under the circumstances. The prosecution must prove that the accused acted *"wilfully"*, with *"intent"*, *"knowingly"* or *"intentionally"*.

[14] Refer to Chapter 12 – *Investigation report format*, for the essential requirements of an assessment of an interviewee.

6.1 Interview of complainant

Cooperation is likely to be apparent when interviewing complainants. During the initial conversation with the complainant, Investigators should give complainants a brief explanation of the Commissioner's responsibilities,[15] powers and mandate and also inform them, in general terms, of the activities the Investigator is undertaking on behalf of the Commissioner.

Regardless of whether the complainant's identity is a matter of public record, the complainant should be advised that the policy of the Commissioner is to neither confirm nor deny the existence of a complaint and investigation and to not comment publicly on the identity of a complainant.[16] Investigators should not make promises to a complainant that, in the event of a court proceeding, the complainant's identity and allegations would not be disclosed[17] to the defence and the courts.

Investigators should advise the complainant that the Commissioner, in conducting an investigation under the *Acts*, does not do so as a representative of the complainant, nor can an ongoing dialogue on the status of any investigation be expected.

Where the purpose of the interview is to obtain clarification or additional details, Investigators must avoid any comments, which would raise the complainant's expectations or beliefs as to whether the allegations are founded or unsubstantiated.[18] Complainants are to be advised that the Commissioner will communicate in writing the decision concerning the complaint file.

6.2 Interview of independent vs biased individual

In interviewing a complainant, a witness[19] or a suspect, Investigators must be mindful of the degree of openness and candour which can be used, having regard to the risk that evidence could be destroyed following an indication of the Commissioner's interest.

Independent witnesses[20] usually have no personal concerns as a result of any investigation or subsequent legal proceedings. With no affiliation to the individual or political party being investigated, they may be considered more impartial and therefore can be viewed with greater credibility. Potentially biased individuals include the complainant, the subject of a complaint, suspects[21] and all persons who have a distinct interest in the outcome of the investigation or court proceedings. Consequently, their evidence and information may be prone to colouring, ambiguity and partiality. Biased individuals may also feign poor memory recall or exhibit revealing symptoms of selective memory when asked difficult questions.

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[15] Refer to Chapter 17 – *The decision to prosecute*, for more information on this matter.

[16] Refer to Chapter 20 – *Relations with the media*, for more information on what can or cannot be discussed publicly.

[17] Refer to Chapter 19 – *Pre-trial disclosure*, for more information on this matter.

[18] *Supra*, footnote 17; see 4 d) for the specific reference concerning the notes of the interview that must be disclosed to the defence and the accused.

[19] *Supra*, footnote 2, for the distinction between "witness" and "suspect".

[20] *Supra*, footnote 2.

[21] *Supra*, footnote 2.

Investigators must carefully assess the impartiality and credibility of potentially biased individuals.[22] They should also identify the basis for any potential bias and seek to counteract that bias through more detailed or more critical questioning of the person. Whenever possible, corroboration of potentially biased or unreliable information and evidence should be obtained from other independent sources.

6.3 Interview of public officials

Investigators may have to interview public officials, (federal, provincial, municipal) to obtain personal information[23] or to verify public records. The approach to public officials must be open and transparent, without the use of pretext, to ensure that any evidence provided will be admissible in any formal proceeding.[24]

Investigators should seek the cooperation of the public official being interviewed to maintain the confidentiality of the investigation.

When verifying public records, Investigators must ascertain which individual has legal access to public documents and that the release of personal information and documents to the Commissioner of Canada Elections is within the spirit and intent of any relevant privacy legislation.[25]

7. INTERVIEW PREPARATION

7.1 Objectives and preparation

In preparing for an interview, Investigators should thoroughly review the work assignment[26] and determine how that interview should be conducted.

a) In general, the objectives of many interviews are simply to gather facts or to expand on the information obtained from a complainant, or other sources, which triggered the need for the investigation. In some instances, it would not be convenient to prepare written questions in advance of the time set for the interview; however, each question raised and answers provided should be systematically noted in writing during the meeting; when this is not possible during the meeting, a detailed written report should be drafted as soon as practicable after the interview when the facts are still fresh in the memory. The report should record the date, time, location and duration of the interview, the identification of the persons in attendance, the facts uncovered or, if feasible, the questions asked and the answers given; where the interview is done over the telephone, the report should include the pertinent data as detailed above.

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[22] *Supra*, footnote 14.

[23] *Supra*, footnote 7, for the definition of "personal information".

[24] See Chapter 14 – *Assessment of investigation findings*, for more information on the requirements, which must be considered.

[25] See Chapter 8 – *Access to records, books and documents*, for the requirements that must be considered.

[26] *Supra*, footnote 1.

b) In many instances, a more formal interview should be conducted. That would be the case when specific points or situations should be clarified. Indeed, a formal interview should be used to interrogate[27] a witness or suspect along the lines of a series of written questions prepared in advance. Some answers may suggest additional questions during the interview; those should also be clearly recorded and numbered in the report. Ideally, only one person at a time should be the subject of a formal interview; if another person insists on being present and wishes to address some or all of the questions posed to the witness or suspect, his or her separate answers should be recorded as such. Preferably, however, investigators[28] should attempt to interview witnesses[29] or suspects[30] individually and separately from one another. The appropriate interview and cover sheet form should be used to record the date, time, location and duration of the interview, the identification of the persons in attendance, the questions asked and the answers given.

Since no one can be compelled to answer questions, an interview must be ended as soon as a person refuses to answer any more questions.

7.2 Factors to consider

Investigators should carefully assess the following factors when preparing and planning for an interview or an interrogation:

a) understanding the specific goals and objectives of the instructions[31] issued by the Chief Investigator or Senior Counsel to the Commissioner and adjusting the focus to each case accordingly;

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[27] Webster's Collegiate Dictionary.

[28] Refer to Chapter 2, for the definition of "person in authority".

[29] *Supra*, footnote 2, for the distinction between "suspect" and "witness".

[30] *Supra*, footnote 2.

[31] *Supra*, footnote 1.

b) whether other prior enquiries or investigations are necessary before conducting the proceeding;

c) whether all relevant background information and all available documentary records[32] and evidence related to, or germane to the context of the interview, were collected and properly assessed;

d) whether a review of the information from other witnesses,[33] documentary records[34] and public sources provide a different perspective on the work assignment[35] received from the Chief Investigator, in which case the new facts should be reported to the Office of the Commissioner before proceeding any further;

e) whether a witness with a disability requires special assistance;

f) if the witness wishes to be interviewed in a language other than that of the interviewer, the Investigator will contact the Commissioner's Office for arrangements.

Should Investigators determine that additional background information is necessary, they may directly contact other government agencies such as the Royal Canadian Mounted Police (RCMP) and local police forces.[36] Any approach to a government agency should be done within the context of applicable privacy and access to information laws. The Commissioner may also have memorandums of understanding in place that allow for the exchange of information. Investigators should seek the advice of the Chief Investigator before approaching any government department.[37]

Investigators should first seek advice from the Chief Investigator or Senior Counsel to the Commissioner, prior to contacting Elections Canada in Ottawa to obtain any "*election documents*"[38] to obtain material related to the *Candidate's return on Financing and Expenses in an electoral campaign.*[39]

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[32] *Supra*, footnote 7.

[33] *Supra*, footnote 2.

[34] *Supra*, footnote 7.

[35] *Supra*, footnote 1.

[36] Refer to Chapter 21 – *Relations with law enforcement agencies*, for more information on this matter.

[37] Refer to Chapter 8, sections 2, 6.1 and 6.2 for more information on this matter.

[38] *Supra*, footnote 7, for the definition and description of "election documents" and the material that must be filed with the candidate's return to the Returning Officer within four months after polling day. Also see section 2 of the *Act*.

[39] See section 451 of the *Canada Elections Act*.

In obtaining information from any source, Investigators should take into account the time needed to do the job, the costs involved,[40] the priority of the work assignment and the time available.

7.3 Research and study

Investigators should always invest the necessary time and effort in the preparation of a successful interview. Lack of adequate planning and preparation are a cause of failure in the interviewing process. Before undertaking any interview, Investigators should:

a) **develop** a thorough understanding of the relevant provisions of the *Acts,* **understand** which alleged infractions are under investigation and **seek** advice from the Chief Investigator or Senior Counsel to the Commissioner where clarification and assistance are required;

b) **develop** a thorough knowledge of the vocabulary, both everyday and technical, which will be needed to describe the situations, practices and activities of the players involved in the electoral process, which could be encountered in the course of the investigation; should the investigation involve a particularly technical area, Investigators should discuss the matter with Senior Counsel to the Commissioner or the Chief Investigator;[41]

c) **obtain** as much background information as possible by reading files which dealt with similar issues, **discuss** the assignment with the Chief Investigator so as to appreciate all potential avenues of investigation in the broadest possible perspective; interviewees are likely to be more responsive and less evasive with Investigators whom they think "know the game";

d) **know** the history of the individuals concerned, party affiliation and record of compliance with the *Act*;

e) **read and review** the investigation and complaint files to be familiar with the allegations, evidence gathered and specific elements of proof required to prove, beyond any reasonable doubt, that an offence was committed and by whom;

f) **be careful** of any biased assumptions made in the preparation of questions by keeping an objective focus on all reasonable scenarios, so as to include all the right questions and to avoid questions which may distort or elicit the wrong information from the interviewee.

7.4 The 5 W method

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[40] Refer to Chapter 25 – *Professional fees and disbursements*, for the factors to consider.

[41] *Supra*, footnote 7.

Once Investigators are clear on the goals and objectives of the undertaking, they should , in consultation with Chief Investigator, address the following questions:

a) **What** information or evidence is required to prove each specific element of the offence?[42] **What** is the threshold of proof required for each element of the offence? **What** is the possible due diligence defence available to the accused? This question should be determined during the interview through proper questioning.

b) **Who**, by virtue of their normal business duties, relationships, affiliations or involvement with the alleged infractions, can answer questions related to the matters at hand? **Who** should be interviewed first? **Who** else should be interviewed and in what sequence? **Who** may provide negative information to rule out other possible implications or corroborate evidence?

c) **Why** is the interview necessary? Do the objectives of the investigation require the conduct of an interview or an interrogation?[43]

d) **Where** should the interview be conducted? **Where** would it be more convenient or effective and why? Is the location sufficiently private, neutral and free of visual or noisy distractions? Investigators should note, where an interview is of particular importance to the investigation, that it should be conducted away from busy office routine, frequent telephone disruptions or young children. At times, it may be necessary to rent a hotel room or small meeting room in a hotel. Where a hotel room is required for an interview, it should be discussed in advance with the Chief Investigator to determine what other arrangements may be available. Investigators must ensure that they are not put in a position that may result in allegations of wrongdoing. In situations where a hotel room is required, Investigators should never be alone with the interviewee.

Additionally, Investigators should only use police premises as a last resort and only after consultation with the Chief Investigator. The use of a police station, under certain circumstances, can provide a witness or a suspect with the defence that they felt that their freedom was constrained and that they were under some sort of detention.

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[42] *Supra*, footnote 15, for more information on the criteria to consider.

[43] See section 7.1 in this chapter for the difference between these two proceedings.

e) **When** should the interview be conducted? Should several interviews be conducted simultaneously to prevent any collusion between witnesses or suspects?[44] How much time should be planned? **When**, during the week or the day, would an interview be more likely to be effective and successful?

7.5 List of written questions

The most important aspect of a successful interview, which is often neglected, is the formulation of written questions. This exercise not only sharpens the mental focus on the task at hand, but also provides Investigators with an opportunity to reflect on what to ask, which effective words to use and which sequence in the list of questions is more likely to be more successful in eliciting the required information and evidence. Investigators should therefore:

a) **prepare** a written list of numbered questions and facts which need to be answered. Logical responses should be anticipated and sub-questions developed for each possible scenario, while remaining flexible during the actual questioning and allowing room for different lines of inquiry in response to an individual's answer. The written list **should contain** all matters relevant to the alleged infractions, to the elements of each specific offence, to the burden of proof required for each specific offence and to the possible defence available to an accused person. Having a written list will ensure that important matters are not overlooked if the interview becomes somewhat far-ranging or disjointed;

b) **be aware** that a list of questions is never a script to be read, but only a guide. It cannot replace mental alertness, sound psychology and effective communication skills. There should also be room for the unexpected and the need to address unforeseen issues and to exploit all new investigation leads which may arise during the interview.

c) **review** the list of questions provided by the Office of the Commissioner and incorporate the more relevant ones into your own list. The list will contain questions that are designed to clarify certain points or to elicit specific information that the Commissioner requires to determine the most appropriate course of action.

In certain cases, the Chief Investigator may require that Investigators submit their written questions for review prior to the interview. There could also be circumstances where Investigators will be required to use, without modification, the written questions prepared by the Office of the Commissioner.

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[44] *Supra*, footnote 2.

7.6 Use of documents during the interview

Where an investigation requires that documents,[45] provided by a complainant or supplied by the Chief Investigator with the letter of assignment,[46] be introduced or discussed during an interview, Investigators should proceed as follows:

a) **prepare** a schedule of documents containing a description of each document, together with a numerical or alphabetical reference number;

b) **review** each document carefully, in its full contextual perspective, against all other relevant facts and elements of the allegations or issues to acquire a full understanding of the reasons for introducing the documents during the interview;

c) **prepare** a list of questions which covers all relevant facts and information contained in the documents, record what will be raised during the interview, including any contradictions, ambiguities, errors, suspected or known false information contained therein and questions concerning the involvement and responsibility of the interviewee for the information contained in the document;

d) when introducing documents or discussing information relating to documents, **identify** the documents with their proper reference number and description, **provide** a photocopy of the documents to the interviewee and **request** the interviewee to take the time to read the documents. Investigators should **also consider** highlighting key points or facts to enhance the focus of the interview proceeding;

e) **request** all persons present during the interview to initial the documents,[47] to record their acknowledgement and to avoid any confusion on which numbered documents are related to specific questions and answers;

f) **retain** all documents introduced during the interview because they form an integral part of the interview proceeding, and must be **forwarded**[48] with the interview statement report to the Office of the Commissioner;

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[45] *Supra*, footnote 7.

[46] *Supra*, footnote 1.

[47] See also paragraph 9.5 of this chapter for the specific reference concerning the requirement for another Investigator who is present to sign the notes of the interview.

[48] Refer to Chapter 9 – *Collection, use and preservation of evidence*, for the essential requirements.

g) should any other documents, beside those introduced by the Investigators, be produced voluntarily or discussed by the interviewee, Investigators must **conduct a preliminary assessment**[49] to determine whether they contain any information or evidence which could be used against that person in a court proceeding. Where they believe, on reasonable grounds, that it is the case, then they must stop the interview and read the appropriate official cautions as laid out in chapters 7 and 8;

h) documents described in the above subsection 7.6 g) should be **handled** and **processed** in accordance with the procedures laid out in Chapter 8 governing the access to records, books and documents.

8. KEEPING A RECORD OF THE INTERVIEW

8.1 Note taking

It is essential to be able to remember what occurred during an interview. However, good memory cannot replace factual, accurate, complete and prompt note taking which can directly result in the success of any subsequent proceedings. The value of Investigators' notes is a function of the care taken in preparing them. This is true for the two following reasons.

a) First, Investigators' notes constitute tangible evidence indicating what was said, by whom, and what they saw and did. Not only will the accuracy of subsequent interview or investigation reports be assured, but Investigators will be able to rely upon their notes further along in the investigation proceedings.

b) Second, where Investigators may refer to notes to refresh their memory in subsequent court proceedings, defence counsel has a right to review and inspect those parts of the notes which refer to the case, and cross-examine Investigators on them. In fact, in criminal matters, defence counsel has a right to Investigators' notes, prior to trial or hearing, pursuant to the federal Attorney General's disclosure rules that permit access to documents which are required to appropriately defend their client.[50]

Investigators must appreciate the importance of keeping accurate and complete notes of an interview. This becomes more significant when a time lag occurs between the time the case was referred to the Office of the Commissioner and the date of the interview. Investigators are expected to make copious notes of any interview because these notes could be required as admissible evidence in a court of law.[51]

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[49] Refer to Chapter 3 – *Preliminary assessment of alleged infractions*, for the essential requirements.

[50] *Supra*, footnote 17.

[51] *Supra*, footnote 17.

8.2 Essential points

When making an official record of an interview, Investigators should include all contextual points related to the purpose of the interview, the duration, the time, places, surroundings, persons in attendance and their signature. They should consider whether to use or adapt the *Sample of interview coversheet* annexed as Appendix 1 at the end of this chapter, and whether to prepare a written list of questions in advance with sufficient blank spaces to record answers and observations made during the interview.

8.3 What to record

8.3.1 Completeness

Investigators' notes should be complete in all necessary details. Partial facts are of no use to anyone. Notes should include exculpatory as well as incriminating evidence. Notes should be extensive enough to allow the preparation of detailed and accurate interview reports. Investigators' notes should reflect that they have been an impartial listener. Where a doubt exists as to the relevancy of some information, Investigators should err on the cautious side, record more details than less and determine later what may be pertinent.

When interviewing a suspect,[52] Investigators should record the full conversation as much as possible, so as to avoid being challenged later on the basis of incomplete notes. Investigators' notes should clearly explain what they saw, heard, and did in a concise fashion. They should not include in their notes any non-related material, which could cause needless explanation and embarrassment in any subsequent judicial proceedings.

8.3.2 Accuracy

To ensure the accuracy of their notes, Investigators should prepare them at the time the information is being gathered. Any unnecessary delay in the preparation of interview notes can affect their accuracy. Investigators must be careful to properly record the information described in Appendix 1.[53] Whenever possible, notes should be a verbatim account of the questions asked and statements made; when it is not the case, the record should state ***"or words to that effect"***; or, Investigators may consider asking the interviewee to repeat any important information provided.

When taking notes from a potential accused, Investigators must ensure that the evidentiary value of the statement is preserved and comply with policies and procedures laid out in chapters 7 and 8 concerning the protection of *Charter* guaranteed rights and access to records, books and documents.

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[52] *Supra*, footnote 2.

[53] See Appendix 1, at the end of this chapter, for a *Sample of interview coversheet*.

8.4 What to retain

8.4.1 Do not sanitize

Investigators' notes should not be rewritten to either embellish or sanitize them. Notes of an interview should be an exact record of what was said, heard and observed. Where details are recalled later, and were not recorded in the notes at the time of the interview, Investigators are advised to prepare a fresh addendum notation and to include the date and time additional details were recalled and noted.

Even though notes of an interview may be subsequently typed or entered in a computer data base, Investigators must retain their original notes, as they are an integral part of the evidence in any possible court proceeding, which must be disclosed to the defence.[54]

8.5 Recording the interview electronically[55]

8.5.1 Factors to consider

Before recommending having an interview recorded electronically, Investigators should carefully map out a plan of action, including taking into account the following factors:

a) **determine** the reasons why the interview should be recorded and why other possible options are either not available or are not expected to be the most efficient and reliable method under the circumstances;

b) **assess** whether the recording of the interview may intimidate or inhibit the interviewee, or whether the individual will feel less threatened or likely be more cooperative because of the perception that such recording will provide a better guarantee of accuracy of what transpired during the interview;

c) **ascertain** whether the electronic recording will be the only verifiable record of the interview or if the recording will only be a general "memoir" to substantiate the written interview notes or interview report;[56]

d) where it is ascertained that the recording of an interview is required, **obtain** the permission of the interviewee, since the surreptitious recording of an interview will not be condoned as a matter of policy; and

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[54] *Supra*, footnote 17.

[55] In this chapter, recording electronically includes videotaping.

[56] *Supra*, footnote 14, for more information on the essential requirements.

e) where the recording of an interview has been approved by Senior Counsel to the Commissioner or the Chief Investigator, Investigators should **be mindful** that the recording does not lead them in a false sense of reliance and complacency instead of keeping alert and taking complete and accurate notes.

Note: Videotaping of interviews of suspects and witnesses is becoming more of the norm in police investigations. While it is not a practice presently in use by the Office of the Commissioner, neither is it rejected as a valid investigative tool. Senior Counsel to the Commissioner may authorize the use of videotape.

8.5.2 Procedures for the use of electronic recording

Where the recording of an interview has been approved, Investigators will proceed as follows to ensure that the electronic record may be used as admissible evidence in any court proceeding, and that will withstand cross-examination by the defence[57] and the review by the court:

a) Investigators should **ensure** that the recording machine has been tested, is in perfect running condition, that there is a sufficient quantity of blank tapes or cassettes which cannot be over-recorded and that they are thoroughly familiar with its operation;

b) with the recording machine turned on, **read** the information contained in Appendix 2, including your profession, name, the location of the interview, the date and time, and the number of the meter reading on the recording machine;

c) **identify** by name the interviewee and **request** an oral confirmation of identity, including address, place and date of birth; if there is anyone else present, also request that similar details of identity and reasons for presence are orally provided;

d) **explain** to the interviewee the reasons why the interview be recorded, such as less risk of error, greater accuracy and verifiability of information and evidence;

e) **explain** to the interviewee that the consent to the recording of the interview is voluntary and that if there is a change of mind, the recording will be stopped immediately. Then **state**:

> *Do you (state the name of the interviewee) agree to the recording of your interview?*

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[57] *Supra*, footnote 17, for more information on what must be disclosed to an accused and his counsel.

f) in the case of **refusal**, the recorder must be **turned off**;

g) where **consent** has been **granted**, **advise** the interviewee that before any interruption, or turning off of the recorder, the date and time of the interruptions will be called aloud and, upon resuming the interview, the same procedures will be followed;

h) **proceed** with the interview as planned and prior to its ending, state the time, the date and the number of the meter reading on the recording machine;

i) should the interviewee offer to say something ***"off the record"*** by requesting orally, or with gesturing signs that the recorder be turned off, or request that handwritten notes be discontinued, Investigators should state that they can only proceed on the record. Should the interviewee wish to discuss whether these conditions are negotiable, Investigators should attempt to find out why the interviewee no longer wishes the interview recorded. In the case the interviewee does not accept answering questions ***"on the record"***, Investigators must terminate the interview;

j) **advise** all interviewees that to ensure a complete record, nodding or silent gesturing must be corroborated by spoken words;

k) **remind** interviewees to speak in turn and **refrain** from asking follow-up questions while the interviewee is still answering the previous question;

l) should interviewees wish **to obtain** a copy of the recording of their interview, advise the Chief Investigator or Senior Counsel to the Commissioner and make the necessary arrangements in compliance with policies and procedures governing the application of standards to ensure the integrity of the original copy and the proof of continuity of possession of court evidence;

m) **retain** the original recording, since it forms an integral part of the interview proceedings which must be **forwarded**[58] to the Office of the Commissioner together with the statement and investigation reports;

n) the use of **videotape recording** presents certain logistical challenges and is not amenable to be used by a single interviewer. In cases where videotape recording is considered essential to the investigation, expert assistance, possibly through a local police organisation, may be necessary. As is the case with audio tape recording, it is essential that notes also be taken.

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[58] *Supra*, footnote 14, for the other essential requirements.

9. PRESENCE OF ANOTHER INVESTIGATOR

9.1 Prior approval

Where valuable information and evidence provided by a key witness[59] needs to be corroborated, or where a suspect[60] may be charged later, or where circumstances are such that additional operational expenses be warranted for the conduct of an interview in the presence of two Investigators, prior authorisation[61] should be obtained from the Chief Investigator or Senior Counsel to the Commissioner.

9.2 Identification requirements

Investigators should proceed by fully identifying themselves and clearly explaining the respective role and responsibilities each will assume during the interview. They should also answer any concerns raised by the interviewee such as why it is necessary to have a second interviewer present. Then, they should ask whether the individual consents to the presence of the second Investigator and accordingly document the response in their notes. In the event of objection to the presence of a second interviewer, one Investigator should leave.

9.3 Rationale

A second interviewer can confirm the statements made, the manner in which the interview was conducted, and the fact that appropriate official cautions[62] were read to the individual and were understood by the individual before a decision was made as to whether any rights were waived.[63] A second interviewer can also assist in the interview preparation to determine the extent and value of the information and evidence required from an interviewee, and later on contribute in assessing[64] the character and credibility of the interviewee and the reliability of the evidence.

9.4 Respective roles

Where two Investigators are present during an interview, one should normally take the lead and conduct the interview while the other observes and carefully notes what is transpiring. Investigators should agree in advance that the second interviewer could enter the discussion on a limited basis to clarify points or questions which are overlooked.

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[59] *Supra*, footnote 2.

[60] *Supra*, footnote 2.

[61] *Supra*, footnote 1, for more information on this matter.

[62] *Supra*, footnote 2.

[63] *Supra*, footnote 2.

[64] *Supra*, footnote 14.

Alternatively, they may also agree to switch roles where one has different areas of expertise or knowledge. However, both should be thoroughly familiar with and share all available information contained in the investigation file. Both should also have an identical copy of the list of written numbered questions.

9.5 Note taking

Where two Investigators are conducting an interview, each will normally keep written notes as an independent, verifiable and accurate record of the interview. One reason to proceed in this fashion is to ensure that note taking never falls behind the questions and to clarify, where necessary, answers as they are recorded.

If, however, one is designated as the recording interviewer, the other should carefully review the record of the interview as soon as possible after the interview, preferably in the presence of the interviewee. If they agree that the record is complete and accurate, then they must sign the notes, initial each page and indicate the date and time. Should there be any disagreement with the recorded notes, or if additions are to be made, an Investigator should first prepare notes of the facts on which there is disagreement or the facts to be added and, thereafter, make a notation on the notes of the interview as follows:

> *... subject to my own observations (or recollection) in my own notes, dated...Month...20...*

Investigators should offer to the interviewee the opportunity to read the notes taken by the interviewers or alternatively to read them aloud. Should the latter decline the offer, the decision should be accepted and so recorded in the notes. Regardless if the interviewee accepted to read the notes or have them read, Investigators should ask the interviewee to sign or initial the notes taken by the Investigators and record the decision.

9.6 Copy to the interviewee

Should the interviewee request a copy of the interview notes, arrangements are to be made and the Chief Investigator advised when a copy was provided.

10. INFORMATION NOT READILY AVAILABLE

Should an interviewee wish to check information before answering a question, or be unable to produce a document[65] at the time of the interview, the matter should be recorded in the Investigators' notes with the description of the documents and the promise to provide it at a later date. Should the information not be received within the time agreed, follow-up action should be taken.

Alternatively, Investigators may consider adjourning the interview until the information is available. The decision to adjourn will depend on the inconvenience caused, the interviewee's degree of cooperation, the length of the delay and the importance of the information requested. Investigators may wish to take advantage of the adjournment to read and assess the information provided before resuming the interview. Where an adjournment may have an impact on the time limitation for a prosecution, the matter should be reported to the Office of the Commissioner.[66]

11. ELECTRONICALLY TRANSCRIBED INTERVIEWS

Investigators may identify a particular witness' information as extremely critical to the successful development of a major investigation or expect their interview to be a lengthy session. To ensure that all details of the witness' information are properly recorded and preserved, the use of a court stenographer to take down and transcribe the entire interview may be considered.

Investigators should first obtain advice from the Chief Investigator or Senior Counsel to the Commissioner if they contemplate using the services of a stenographer, since it requires formal arrangements and the agreement of the witness[67] to be recorded under oath.[68] Additionally, because such services are expensive, their use should be carefully considered.

12. INTERVIEW TECHNIQUES

12.1 Appearance of the interviewer

Investigators should be mindful of the requirement to assess the behaviour of the interviewee during the interview. They should also remember that, at the same time, the latter is also observing their behaviour and their actions. To the greatest extent possible, Investigators should maintain eye contact with the interviewee.

Investigators should always dress neatly, be punctual and take the time before starting the formal proceeding to establish a professional and favourable first impression with the individual.

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[65] *Supra*, footnote 7.

[66] See subsection 514(1) of the *Canada Elections Act*.

[67] *Supra*, footnote 2.

[68] See section 17 in this chapter, for additional information on sworn statements.

12.2 Introduction protocol

Investigators should act with fairness and dignity with individuals from whom they seek cooperation. They should put themselves in the interviewee's shoes to appreciate, if the situation were reversed, that they would also want to know whom they are dealing with and for what purpose, how long it will take and what possible implications may ensue from the proceedings.

Before asking questions, Investigators should thank the individual for taking the time to meet them, express their appreciation for any possible inconvenience and then proceed as follows:[69]

a) **provide** proof of their identity[70] with their numbered identification card and also offer a business card with their telephone number;

b) **explain** in general terms the role, responsibilities, mandate and powers of the Commissioner;[71]

c) **explain** briefly the complaint review process, the confidentiality aspects[72] and the resolution process;[73]

d) **advise** the individual of the specific allegations of infractions which you are mandated to investigate on behalf of the Commissioner;

e) **inform** the individual of the reasons why cooperation is solicited;

f) **provide** an estimate of the time and duration of the interview;

g) **offer** an opportunity to the individual to ask questions and **provide** satisfactory clarification;

h) **obtain** the individual's agreement to start the interview proceedings.

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[69] See Appendix 2 at the end of this chapter, *Protocol script for interviews*.

[70] *Supra*, footnote 10, for more information on their statutory authority.

[71] *Supra*, footnote 15.

[72] The rationale for keeping the complainant's identity confidential is because the *Act* relies on *"self-policing"* and the need to inform of alleged infractions is greater in these Statutes than in other Statutes for which an active policing service is provided. Providing the name of complainants would discourage anyone to come forward with knowledge of violations. Nevertheless, in the event that an information is eventually laid, the Commissioner may have to disclose the name of the complainant to the accused as a result of the obligation to make full disclosure.

[73] Refer to Appendix 1, *Alleged Infraction Process*, at the end of Chapter 3, for more information on this matter.

12.3 Preliminary questions

At the beginning of the interview, Investigators should first consider the use of ***"soft"*** questions, because they are not likely to cause a refusal to answer and they may be more effective. If convenient, soft questions could include biographical and generic background information as shown in Appendix 1 at the end of this chapter.

By opening with such non-threatening questions, it may help develop a favourable rapport with the interviewee. Should the latter wish to expand and volunteer unsolicited personal information, Investigators should skilfully refocus the interview without jeopardising the cooperation. On the other hand, in the event that the individual resists responding to further questions, at least the individual's identity will be ascertained and some general information will be gained.

12.4 Control of the interview

Since the objective of an interviewer is to keep the individual talking and responding, Investigators should do as little talking as possible after the general introduction. They should be patient, alert and persist in efforts to have the interviewee respond to questions. Should the individual digress from the point of a question, then Investigators should ask a further question or make a suggestion that will lead back to the point of discussion. However, Investigators should refrain from asking follow-up questions when the interviewee is still answering the previous questions.

12.5 Types of questions

There are several types of questions and each serves a different purpose in an interview. Investigators must therefore exercise sound judgement in the selection of the types of questions which are likely to be more effective in any given circumstance. This may depend on the character, personality and responsiveness of the individual and the chemistry factor between the interviewee and the interviewer.

Unless Investigators are conducting a follow-up interview, prior knowledge of an interviewee's idiosyncrasies should encourage Investigators to prepare a list of written questions which takes into account the need to adapt questions with the evolving dynamics of the interview as it progresses. Investigators should determine the most suitable approach to take with different individuals and consider ahead of time the following methods of interviewing:

General approach to interviewing

Ask only one question at a time.

Ask straightforward questions in a precise, concise language.

Ask questions in a systematic order, with a clear focus of where you are heading, why and what logical responses are expected.

Avoid asking questions that cause hostility, but do not skirt difficult matters.

Repeat or rephrase questions if necessary, especially when the response is either unsatisfactory, unclear or evasive.

Cover all important matters with detailed questions.

Give time to answer and do not interrupt silence.

Do not suggest answers or indicate you know the answers.

Be sure to fully understand the answer; if not, obtain necessary clarification.

Allow the interviewee to qualify answers if applicable.

Separate the facts from inferences or opinions and ascertain the difference with the interviewee.

Ask if there are any other witnesses, documents or physical evidence that can corroborate what the interviewee is saying and how to access these other sources.

12.6 Open questions

Open-ended questions are designed to give the interviewee a large degree of freedom in responding to a basic subject. An example could be: *"tell me about the meeting you attended..."*. Phrasing a question in this manner tends to put an interviewee at ease and is a useful method of initiating an interview and encourages spontaneity. Open-ended questions, because of their less structured nature, often elicit responses that are more detailed and informative. Unless such questions would not be appropriate, they should be used early on during the interview. These questions allow interviewees to report observations in their own terms and to recall events according to their own train of thoughts. As a result, events that may have been forgotten are recalled. Investigators should refrain from interrupting with detailed questions until after the interviewee has finished talking.

Investigators should consider using open-ended questions with a person whom is either silent by nature or who is reluctant to give information. By persisting longer with open-ended questions with most interviewees, Investigators may discover other helpful avenues of inquiry once an interviewee loosens up.

Open-ended questions have their limitations and Investigators should be prepared to use other types of questions, as soon as necessary. For instance, open-ended questions are not particularly effective with extremely verbose persons, with individuals with a poor sense of relevancy or focus, or with interviewees who are purposely taking advantage of the situation for ulterior motives. The lack of structure in open-ended questions, or too large of a focus, allows an individual to ramble on and entertain matters that are only tangentially related to the case. Investigators should therefore use open-ended questions, primarily when they require an overview, since open-ended questions are not designed to uncover specific details.

12.7 Closed questions

Closed questions can be categorised as those questions, which an interviewee will answer in a few words or by a simple yes or no. Investigators should consider using such questions when they wish the interviewee to focus on a narrow and specific point. This point may have been pre-determined during the preparation phase of the interview and which is relevant or legally significant.

Contrary to open-ended questions, closed questions rely on the individual's ability to recall specific details, which may have been omitted from a general overview type of response. They are useful to check on facts that might have been glossed over earlier in the interview. Investigators should use closed questions to ascertain whether the interviewee's earlier responses are consistent, credible and if additional information can be obtained.

Because of their narrow focus, closed questions naturally decrease the spontaneity of the individual's response. Investigators should not rely on closed questions with individuals that may feel threatened or are uncooperative, because much information may not be disclosed. Investigators should also guard against leaving the impression that they are not interested in a full recounting of the facts but merely want a brief response to questions favouring only a predetermined hypothesis. Such an approach could run the risk of having the interviewee agree to an Investigator's version of the facts rather than disclosing his own.

12.8 Clarification questions

Investigators should not hesitate to ask for a clarification on a vague or ambiguous response made earlier during the interview. Such questions are intended to increase the clarity, specificity or coherence of the response. Investigators should be particularly mindful of the need to anticipate sufficient space in a list of written questions for their later insertion during the course of the interview.

Investigators should take an opportunity to review earlier responses and to ask the interviewee to clarify information. Rephrasing the main points previously expressed to ensure mutual understanding and agreement could do this. Such questions are particularly important in an interviewer's arsenal to ascertain the credibility and reliability of the information and of the witness.[74]

12.9 Probing questions

As the interview proceeds and the information provided is assessed, Investigators may develop new hypotheses in relation to their investigation. In order to encourage an individual to expand upon such specific issues, Investigators may consider using a series of probing questions, which are designed to elicit facts that support new hypothesis. Care should be taken however to avoid asking questions which do not support other possible hypotheses. Investigators should keep their focus as wide as possible so as to avoid, at an early stage of an investigation, overlooking important leads in other directions.

A more extensive use of probing and exploratory questions may be appropriate in dealing with a potentially biased person, suspect[75] or complainant because they have a tendency to disclose only part of the relevant facts, choosing to ignore facts that they consider not helpful to their case. Investigators should therefore probe deeper so as to uncover the whole picture, which will also help to assess the credibility and objectivity of the interviewee.

12.10 Multiple questions

A multiple question contains more than one closed question and, consequently, requires more than one answer. It is usually identified by the use of the word "and" in the question.

Investigators should avoid multiple questions because the response is likely to be confusing. Unless the matter is clarified through further questions, it will not be clear which part of the question is being answered.

12.11 Detailed questions

In order to ensure the validity of a response to a question, Investigators should include in the question all the necessary details and references to the specific elements contained in other questions. For instance, whenever a question first relates to a numbered document,[76] dated invoice or labelled record, they should ensure that all other sub-questions on the same matter also contain the same descriptive elements. While detailed questions may be perceived as redundant or boring, they are particularly effective to address legally significant points or issues and will ensure that the responses are not invalidated.

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[74] *Supra*, footnote 2.

[75] *Supra*, footnote 2.

[76] *Supra*, footnote 7.

12.12 Pauses

Investigators should refrain from breaking the silence when an interviewee pauses or fails to immediately respond to a question. An interviewee may be using the time to consider what to say next, awaiting the interviewer's reaction to previous statements, confused as to what to say or uncomfortable with what was just said.

Investigators should be mindful of the need to remain silent and to ensure they not communicate through body language negative signs of impatience, stress, frustration or intolerance. By remaining cool, calm and collected under all circumstances, Investigators will be more effective in eliciting the respect and cooperation of an interviewee.

12.13 Listening

During an interview, Investigators should listen, carefully observe the body language and assess the meaning of what is said. Too often, commendable efforts are devoted solely to the selection of proper question techniques and to ways of stimulating the interviewee to respond appropriately.

To a large measure, the success of an interview ultimately depends on the interviewer's ability to listen, understand and correctly interpret all the oral and visual signs. Usually in a conversation, people typically "hear" very little of what is said, because of a lack of interest and focus, because of a misconception of what was said or because of an inability to accurately assimilate and analyse what was said.

To avoid these pitfalls, Investigators should practice the following techniques of an effective listener:

Effective techniques

a) **show** interest and empathy; lean toward the interviewee and convey positive non-verbal signal confirming genuine interest in what the interviewee is saying;

b) **exhibit** patience and allow time for the interviewee to find the proper words;

c) **seek** the necessary clarification from the interviewee whenever there may be some confusion as to the meaning of the response;

d) **provide** objective feedback to the interviewee confirming the response was understood; this also reinforces the interviewer's understanding of the information;

e) **let** the interviewee finish the response before assessing the information;

Ineffective techniques

f) **avoid** interrupting the interviewee; do not be disruptive either verbally or non verbally; avoid constantly looking at the clock, rolling the eyes, being distracted by other possible environmental stimuli;

g) **avoid** arguing about words;

h) **avoid** reacting in an emotional manner to offensive language or to a provocation; focus on the purpose of the interview, do not pass judgement and try to determine and assess accurately the source of the interviewee's emotional message;

i) **avoid** facial expression and body language betraying emotions of boredom, disgust, disbelief and contempt which can make the interviewee defensive or evasive.

12.14 Follow-up

Before concluding the interview, Investigators should make arrangements with the interviewee to leave the door open for possible matters of follow-up and possible corroboration of subsequently learned information. They should ascertain a convenient time for the completion of any unfinished business or the provision of promised documents.

13. INTERVIEWING FAULTS

Unless Investigators make efforts to increase their awareness of their own bias and characteristics, they run the risk of using faulty, ineffective or inappropriate techniques. They should, in particular, be conscious of the following human tendencies.

13.1 Anticipation

Where Investigators already know the answer to a question, they should avoid becoming impatient or worse, breaking the silence or adding their own supplementary personal views or opinions to a response. Invariably, all views become mixed, and misconceptions or erroneous ideas of what was said and by whom will cloud the results.[77]

13.2 Closed mind

Where Investigators already know the answers before the interview, they should guard against the tendency to conduct the proceeding by hearing only those facts that confirm the hypotheses. They should ensure their mind does not wander to other matters or perhaps to the next question. They should also be mentally alert to all unforeseen information and new hypotheses or scenarios.

13.3 Prosecutorial bias

Investigators should not misjudge which circumstances would warrant the use of an interrogation technique. They should assess, ahead of time, whether a cross-examination of a hostile witness would be more appropriate, since such an approach invariably puts a person on guard and reduces the information that may otherwise be freely volunteered.

13.4 Goodwill ambassador

Investigators should guard against an aversion to ask hard, embarrassing or touchy questions. They should be mindful that even though this may not be pleasant, they are responsible for ascertaining when straightforward blunt questions must be asked to an interviewee. They should be aware that an interviewee could detect such aversion and may manipulate the interviewer accordingly.

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[77] Refer to Chapter 14 – *Assessment of investigation findings*, for more information on the criteria to consider.

13.5 Faulty questions

Investigators should be prepared to use any combination of the most appropriate type of questions, at the opportune moment during the course of an interview. They should avoid questions that are too general, except open questions (see section 12), since they may lead to generalities. They should develop the ability to ask all the right questions, in a logical sequence, with different words, depending on the personality and character of the interviewee. Questions that are not asked are rarely addressed.

13.6 Conversation capper

Investigators should be mindful of their emotional state and habits. They should guard against doing all the talking instead of gathering the facts. They should not share their views and opinions about the matters under investigation.

14. CHARACTERISTICS OF AN EFFECTIVE INTERVIEWER

Effective interviewers share common characteristics, including the following.

14.1 Good planning and versatility

Although an interviewer should always try to plan and foresee how an interview will proceed, Investigators should be ready as soon as necessary to change the interview plans, if they turn out to be inappropriate or ineffective. By remaining alert to the interviewee's personality, mood and behaviour, Investigators can adjust their approach and techniques with the changing dynamics.

Common sense should prevail; in dealing with a very formal person, an interviewer should also act formally. In this situation, Investigators should be direct, to the point and business-like. In dealing with a relaxed person, the interviewer should display the same attitude of informality, since formality may cause the interviewee to become irritated and uncooperative. In dealing with a nervous, excitable person, an interviewer should be cautious, reassuring and proceed more slowly. Attempts should be made to put persons at ease and to win their confidence. By blending their behaviour with that of the interviewee's, Investigators can expect a significant increase in the rapport and a better chance to achieve the objectives of the interview.

14.2 Perseverance with important questions

Effective interviewers know about the importance to focus on key questions until satisfactory responses are obtained on each. Investigators should be mindful of the need not to leave any important question unanswered, until they are reasonably convinced the interviewees have said everything they know. As soon as a question is answered in a satisfactory manner, Investigators should then concentrate on the next question.

14.3 Questions with a purpose

Unless an interviewer knows why a question should be asked and what response is expected, it is difficult to phrase a question with the most appropriate words. Investigators should therefore formulate and adapt questions in their proper sequence with their respective purposes. They should also avoid disorder in questioning, unless they are consciously doing it with a purpose in mind.

14.4 Unbiased hearing

It is sometimes difficult for most people to avoid "selective hearing". Investigators should therefore avoid modifying or distorting what was said by an interviewee to conform with their own preconceived opinions or bias. They should also refrain from correcting faulty grammar or unusual expressions while listening, since it is imperative they record exactly what was said without changing the words.

14.5 Exploiting unexpected leads

An interviewee may often respond in greater detail to questions than is really necessary. Investigators should be mindful that some people are talkative and enjoy discussing their interests and activities in detail. This often provides new openings and opportunities in other related directions to which Investigators should be alert and attentive. As long as the person is enjoying the interviewer's listening, pressing with detailed questions should be avoided. Investigators should await the most appropriate moment to ask subsidiary questions, in order to follow other investigation leads or avenues worth pursuing.

14.6 Knowing when to be quiet

Investigators should remember that the purpose of an interview is to elicit information without revealing more than is strictly necessary. Therefore, Investigators should ascertain how much information is available to the interviewee and not purposely disclose information, unless the disclosure is an interviewing tactic. They should remember that unauthorised disclosure of information may have serious consequences, including jeopardising the investigation and the reputation of other individuals.

When dealing with a biased individual such as a suspect[78] or a complainant, Investigators should be particularly wary and distinguish facts from inferences and unsubstantiated opinions.[79]

Investigators should not engage in discussions with the interviewee on the reliability or admissibility of the evidence and the information provided by anyone. They should not assume either that the interviewee is familiar with, or understands the technical aspects of the legislation.

They should refrain from providing any legal interpretation of the *Acts.*

15. TELEPHONE INTERVIEWS

As mentioned in paragraph 3 of section 4, the gathering of purely factual information from third parties can be achieved by telephone or letter; however, when evidence of possible misconduct is involved, Investigators should conduct these interviews in person.

Where interviews can only be conducted by telephone, Investigators need to comply with the applicable policies and procedures, including doing all necessary background preparation, providing evidence of their identity,[80] taking the necessary precaution to protect the legal rights of individuals[81] and ensuring a proper record of the conversation is made, whether by note taking or by seeking prior permission from the interviewee to electronically record the interview. It is equally important that effective techniques be used as discussed below.

Telephone interviewing presents unique difficulties. Because of the lack of physical presence of the interviewer, a distance is created which can serve to keep the interviewee on the defensive. Therefore, the development of rapport is more difficult and the candour and spontaneity are likely to be diminished. To minimise these difficulties, Investigators may wish to devote more time initially to preliminary questions that are non threatening and put the interviewee at ease. A greater reliance on open-ended questions will also serve to increase the interviewee's participation.

Investigators should be wary of the tendency to rely too heavily on closed questions, when conducting telephone interviews, and also avoid any techniques that may keep the interviewee on guard and affect the degree of cooperation. With no visual clues to assess the interviewee's behaviour, Investigators need to be more attentive to voice inflections, changes in the breathing pattern, pauses, which may be important emotional signs of possible discomfort, confusion, apprehension, anger and embarrassment. Should such signs be observed, Investigators should exercise sound judgement in adapting their line of questioning and the tone and manner in which the questions are asked.

16. WITNESS STATEMENTS

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[78] *Supra*, footnote 2.

[79] *Supra*, footnote 14, for the other essential assessment requirements.

[80] *Supra*, footnote 10.

[81] *Supra*, footnote 2.

Where an interviewee provides useful oral information or evidence, Investigators may wish to ascertain whether the interviewee would agree to make and acknowledge a written or recorded statement. In the case of a suspect,[82] wherever possible, prior advice from the Chief Investigator or Senior Counsel to the Commissioner should be obtained before discussing with a suspect the possibility of a written or recorded statement.

16.1 Purpose of a witness statement

There exist several reasons for obtaining a signed or recorded statement from a potential witness in a court proceeding, including the following:

a) a written or recorded witness statement allows an Investigator to remember exactly what was said and to report on it;

b) a written or recorded statement more directly involves a witness and works to commit the interviewee, to a greater extent, to the information contained in the interview statement;

c) when questions and answers are documented in writing or recorded, it is very difficult for a witness to later say that the question asked was not understood or that the answer is taken out of context;

d) in case of a trial or other hearing, Investigators will be able to rely on the written or recorded witness statement to testify on what the witness actually said;

e) when setting the grounds for belief in drafting an information for a search and seizure warrant,[83] an accurate account of what has been said will be available;

f) written or recorded witnesses' statements will allow them to refresh their memory of the events in any subsequent court proceeding; because of the lapse in time between an investigation and a trial, written or recorded statements can be used to hold the witnesses to their statement, keeping them from changing their story or forgetting it under pressure, or as a result of the passage of time. Should the witnesses fail to remember or be of little assistance in giving testimony, they will be asked whether a statement was given to the Investigator, at a certain time, place and date. Once the statement is produced and read by witnesses on the basis of refreshing their memory, they can readily admit the truth of the statement and recall the event;

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[82] *Supra*, footnote 2.

[83] *Supra*, footnote 7, for the other essential requirements.

g) alternatively, a witness for the prosecution may give evidence at trial different from that which is contained in the signed or recorded statement; this may take the form of evasiveness or unwillingness to repeat information given to the prosecution. To avoid hurting the case because of the witness' adverse oral evidence, the rules of evidence permit the witness to be cross-examined based on a previous inconsistent statement. Without the prior written or recorded statement to undermine the antagonism of the witness, the prosecution would be unable to neutralise the witness' adverse testimony.

16.2 Statement preparation

Investigators will generally prepare a witness statement from detailed notes or recordings of the interview. It is essential that the following points be borne in mind when preparing the statement, so as to ensure its admissibility in court:

a) the information provided by the witness must be recorded exactly as stated, without any alteration or editing; Investigators should observe the *"rule of verbal completeness"* by recording the statement as a whole, and not in fragments, or by way of summary; the value of what is said can depend on several factors, including to a large extent the degree of knowledge the person who is making the statement has or the latter's understanding of the situation; it may also depend on the clarity of the person's expression, the completeness of what was said and the details of what was said, which are often lost in a summary; the nuance of the witness or the emphasis may be lost if it is unduly summarised by someone else; even if the summary is precise, it may be taken out of context and the meaning may be altered;

b) legalistic terms or terminology that the witness may not understand should be avoided in the statement; Investigators should in particular avoid the tendency to rely too heavily on the language of the *Acts*; if the language used is beyond the understanding of the witness, this may inadvertently aid the defence in challenging the credibility of the witness and, perhaps, having the statement rendered inadmissible; therefore, Investigators should use language at the witness' level in both speech and grammar;

c) where a suspect has received official cautions[84] with respect to *Charter* protected rights, the statement must include an acknowledgement of the caution and that such rights were knowingly waived.

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[84] *Supra*, footnote 2.

16.3 Preferred method

When an interview is conducted, a list of written questions and the answers are recorded verbatim in the appropriate space. This record may be adopted as the witness statement. The advantage of this method is that an interviewee can deal with the matter, while the interview is still fresh in his mind, and may be less inclined to procrastinate or change his mind about adopting the statement.

Investigators should ascertain whether the witness wishes to add or change anything in the statement. They should ask the witness to read the statement and to review contents for accuracy. Should any corrections be necessary, the witness should be asked to initial each such correction and indicate the time and date in the page margin. After obtaining the witness' signature, the interview statement should be signed by all interviewers.

In the event the interviewee either declines to read, listen to the recording or acknowledges the statement, the responses should be clearly documented. Investigators should remind interviewees that if, during any subsequent proceeding, they wish to reconsider their decision, they will be provided an opportunity to acknowledge the completeness and accuracy of their statement.

16.4 Alternative method

Where Investigators' notes of an interview must be re-written into a witness statement and the witness agrees with this procedure, the following steps should be taken:

a) Two copies of the witness statement should be sent to the witness, one to be signed, dated and returned and the extra copy to be retained by the witness; the covering letter should request the witness, prior to signing the statement, to review the prepared statement for accuracy and completeness and to make any corrections to the text by also adding the witness' initials to each correction and each page of the statement.

b) Minor corrections to the statement can simply be done by hand and initialled; if corrections involve more than minor discrepancies, a corrected version of the statement should be prepared; the original, along with the revised and final version, are to be retained on file under the rules of disclosure;[85] where the witnesses seriously object to certain key passages, or have a different recollection of the information provided, the statement should be amended in accordance with their views and a note in a memo-to-file also needs to be submitted concerning the change.

---

[85] *Supra*, footnote 17.

16.5 Sworn statement or solemn affirmation

In general, obtaining a signed or recorded statement from a witness will be sufficient. However, there are circumstances in which it would be advisable to obtain a sworn statement from the witness; for instance, when the witness is critically ill. Investigators should consult Senior Counsel to the Commissioner, whether such course of action is recommended in a particular case and why it would be advisable. For instance, a sworn statement or solemn affirmation would be appropriate in situations involving a disreputable witness, co-conspirator or potentially unreliable or uncorroborated witness whose credibility cannot be depended upon.

Sworn statement or solemn affirmation are particularly helpful in decisions such as whether to commence, continue or terminate an investigation,[86] whether to obtain a search and seizure warrant[87] on the basis of this witness' information. This added measure increases the basis of belief that the witness is reliable.

16.6 Attachment of documents

Where documents are referred to or discussed during an interview, a photocopy should be attached to the witness statement and the original retained in a secure place. Investigators should follow the procedures laid out in Chapter 9 – *Collection, use and preservation of evidence*.

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[86] Refer to Chapter 4 – *Investigation policy*, for more information on this matter.

[87] *Supra*, footnote 10.

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Commissaire aux élections fédérales

Appendix 1

Interview coversheet

Name: ______________________________

Address: ______________________________

____

Telephone: ______________________________

Date of birth: ______________ Place of birth: ______________

Place of interview: ______________________________

Date of interview: ______________ Hour began: ______________

Hour ended: ______________

Periods of interruption: ______________________________

____

Name and address of all persons present: ______________________________

____

____

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Appendix 2

Protocol Script for Interviews

Advise persons to be interviewed of their right to be served in the official language of their choice (French or English). Record the answer.
If you do not speak the language chosen, stop the interview and contact the Commissioner's Office to make the necessary arrangements to have another Investigator assigned to the interview.

I wish to thank you for taking the time to meet with me and I appreciate the inconvenience this may have caused. As stated on my identification card, I am an Investigator for the Commissioner of Canada Elections. The Commissioner is responsible, under sections 509 to 513 of the *Canada Elections Act*, to ensure that the provisions of the *Act* are complied with and enforced. I bring to your attention a photocopy of these sections and invite you read them and initial the pages. Do you have any questions?

____

____

An apparent non-compliance with the *Canada Elections Act* has come to the attention of the Commissioner, particularly with section(s):

____

____

(Describe the section(s) as stated in the work assignment)

In keeping with the standard practice of the Office of the Commissioner of Canada Elections, and in accordance with the law, the Commissioner must take the necessary steps to determine whether or not the facts disclose a compliance and enforcement issue under the *Canada Elections Act*. Do you understand this?

____

____

I have been instructed by the Commissioner to conduct this interview and I have reasons to believe that you may be able to shed light on some points. Do you understand the purpose of my visit?

____

____

I am seeking your cooperation. I also wish to provide you with this opportunity to tell us what you know about these matters. Do you have any questions?

____

____

There are specific points that need to be discussed. I propose to begin with the points on which we have insufficient information to determine whether or not the matter should be further pursued. It is my responsibility to ensure that your rights are properly protected. The interview will last about _____ hours. May I continue?

____

____

If you wish, you will be provided with a copy of your declaration. Copy provided: NO _____ YES _____.

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CHAPTER 12

INVESTIGATION REPORT FORMAT

Commissioner of Canada Elections

January 2004

INVESTIGATION REPORT FORMAT

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1. INTRODUCTION

This chapter provides general guidance to Investigators for the preparation and submission of investigation reports undertaken on behalf of the Commissioner of Canada Elections (the Commissioner).

2. POLICY

Where the Commissioner initiates a prosecution, all investigation reports including notebooks must be disclosed[1] to an accused and defence counsels and may therefore become public documents. These reports may also be obtained under the *Privacy Act*.[2] Investigators should be mindful of these considerations in the preparation and submission of investigation reports.

Investigators are responsible for preserving and reporting information and evidence obtained from others or observed personally. They are also responsible for reporting their work promptly, efficiently, in compliance with the Commissioner's requirements and with the highest calibre prevailing in the field of investigations.

Investigators should keep adequate and proper records that will satisfy their own accounting[3] and accountability. These records, including their notebooks issued by the Commissioner, should be made available for inspection and audit by the Chief Investigator at all reasonable times.

Investigators should first clearly determine the specific purposes for each investigation report, then take the necessary time to organise the information and evidence obtained, in a logical, methodological and chronological manner. They should submit clear, concise, accurate and complete reports which will facilitate the assessment of investigation findings by the Chief Investigator and Senior Counsel to the Commissioner, upon which recommendation for any possible injunctions,[4] compliance agreement[5] or other enforcement action can be made to the Commissioner.

Although investigation reports prepared with a computer word processor program or typewritten are preferred, legible hand-written reports are acceptable, provided they are produced on the official letterhead of the Commissioner of Canada Elections.[6]

---

[1] Refer to Chapter 19 – *Pre-trial disclosure*, for more information on this matter, as amended.

[2] See Appendix 9 of Chapter 8 for section 8 of the *Privacy Act*, R.S. 1985, c. P-21.

[3] Refer to Chapter 25 – P*rofessional fees and disbursements*, for more information on the essential accounting requirements.

[4] Refer to Chapter 16 – *Injunctions*, for more information on this matter.

[5] Refer to Chapter 15 – *Compliance agreements*, for more information on this matter.

[6] See sample investigation report in Appendix 1, at the end of this chapter.

Investigation reports should be factual and supported by evidence. Opinions must be clearly identified and the rationale for forming the opinion must be provided. Care must be taken to record the facts without embellishments.

3. REPORTING FORMAT ELEMENTS

As much as possible, and where applicable, investigation reports should be organised in the following manner:

3.1 Report date

State the actual date the report is submitted, even though the investigation may cover a different time period.

3.2 Complaint file number

Refer to the complaint file number provided in the original letter of work assignment issued by the Chief Investigator or Senior Counsel to the Commissioner.[7]

Include, where investigation findings relate to more than one complaint file, all complaint file numbers for cross-reference purposes.

3.3 Classification level

Use, unless otherwise instructed, the level *"Protected"*.

3.4 Complaint file caption

Refer to the same caption initially mentioned in the work assignment letter received.[8]

---

[7] Refer to Chapter 5 – *Direction and control of investigation*, for more information on the work assignment instructions.

[8] *Supra*, footnote 7.

3.5 Introduction

State the original purpose, objective and goals of the investigation: for instance, to obtain further information from the complainant in order to complete a preliminary assessment of the alleged infractions under such section of the *Act*; or, to interview so and so, who is a witness[9] or suspect[10] in relation to a suspected offence under such section of the *Act*.

3.6 Information

Record and **describe**, in narrative form, the information collected from all sources, including the date and place where the information was obtained.

Name the source who provided the oral information and the documents[11] or, alternatively, **indicate** that the information was provided by a source identified in the sources' portion of the report.

Use separate paragraphs for information and documentary evidence provided by different sources, collected or observed by Investigators.

Attribute investigation findings to the right sources.

Provide, where applicable, the necessary clarifications and explanations between statements of facts,[12] opinions[13] or speculations[14] made by the interviewee.

Attribute statements made to the right person, when others were also present during an interview, and **point out** whether corroboration or disagreement was observed.

Report the results of all inquiries made and of the questions asked, including negative information, and indicate where and how missing facts or evidence may be obtained.

State whether any missing evidence or information exists and whether it can be readily obtained, from whom, how and where.

---

[9] Refer to Chapter 7 – *Official cautions*, for the definition of a *"witness"*.

[10] *Supra*, footnote 9, for the definition of a "suspect".

[11] Refer to Chapter 8 – *Access to records, books and documents*, for more information on the other essential reporting requirements.

[12] *"A truth known by actual experience or observation; something known to exist or to have happened"*. Definition of Webster's Encyclopedic unabridged dictionary of the English language, 1989, Gramercy Books, page 509.

[13] *"A belief or judgement that rests on grounds insufficient to produce certainty"*. *Supra*, footnote 12, page 1010.

[14] Refer to Chapter 11 – *Interview techniques*, for more information on note taking and the reporting requirements of interviews.

Record new allegations of infractions[15] under the *Act* raised by an individual and advise the complainant to report the matter to the Commissioner in writing.

Refer to, when applicable, the taking of witness statements, or recording of interviews, and **provide** salient or important points which are not already contained in the separate interview statements.[16]

3.7 Sources of information

Identify sources, unless they were previously identified in the information portion of the report, including companies. Sufficient details such as name, occupation, address, telephone numbers and date of birth should be provided to establish their identity and whereabouts.

Provide, where applicable, any available information concerning any possible relationship between the suspect[17] and sources of information, together with an assessment of the significance of the relationship on the alleged infractions and degree of cooperation with the investigation.

Assess objectively the reliability of the information and the apparent motive, attitude and rationale for the degree of cooperation with the investigation. Also assess the sources' credibility and, when applicable, whether the source would make a suitable and competent court witness[18] and would agree to testify as a witness in any possible court proceeding.

Explain when the Investigator is the source of the information, where, when and how the information was obtained, and **assess** whether the information is valid and reliable.

3.8 Investigators' comments

Comment on investigation findings and **draw** conclusions as to whether the goals and objectives of the investigation were achieved or if further progress reports may be expected.

---

[15] Refer to Chapter 3 – *Preliminary assessment of alleged infractions*, for more information on the factors to consider and the other essential reporting requirements.

[16] *Supra*, footnote 14.

[17] *Supra*, footnote 10.

[18] *Supra*, footnote 9.

Assess whether the available evidence is reliable, sufficient and substantial enough to prove each element of the alleged infractions. **Note:** The assessment of the evidence for laying an information,[19] whether the elements of intent, knowledge and motive and whether a due diligence defence is readily available to the suspect,[20] will be completed by the Chief Investigator and Senior Counsel to the Commissioner.

Explain any apparent contradiction, confusing or misleading statements made by any sources that are not substantiated by other reliable sources or documentary evidence.

Provide comments as to whether there exist any doubts or evidence concerning anyone's sincerity, impartiality and credibility, including the basis for such opinions.

Indicate, when there remain any outstanding allegations of infraction, which are not resolved, whether other avenues of investigation or administrative action should be considered by the Commissioner to either corroborate or refute allegations. **Assess** their costs, the degree of risks or difficulties envisaged and **provide** a recommendation on a course of action.[21]

3.9 Attachments

Provide a detailed schedule or list of all documents, witness statements, photographs, records, invoices or documentary evidence that are mentioned in the body of the investigation report.

Retain the original handwritten witness statement and **provide** a photocopy[22] together with a typewritten version to facilitate the review and analysis.

Ensure that all necessary reference markings are recorded on each document, so as to comply with the court standards for the continuity and preservation of evidence.[23]

Indicate whether documents were given, borrowed, loaned or seized[24] and whether they may be retained or returned to the provider. The original and photocopies should be clearly **marked**.

---

[19] Refer to Chapter 17 – *The decision to prosecute*, for the underlying standards to lay an information when the Commissioner has approved a prosecution.

[20] Refer to Chapter 7 – *Official cautions*, for policies and procedures governing *Charter* protected rights.

[21] Refer to section 4 *k*) of Chapter 4 – *Investigation policy*, for more information on the factors to consider and the "Threshold Test and Standards" for continuing or terminating an investigation.

[22] Refer to Chapter 9 – *Collection, use and preservation of evidence*, for more information on the transmission requirements to ensure the proof of continuity of possession and admissibility of evidence.

[23] *Supra*, footnote 22.

[24] Refer to Chapter 8 – *Access to records, books and documents*, for more details on the requirements for laying an information to obtain a search and seizure warrant.

3.10 Signature

Indicate which portions of the report are attributed to another Investigator, if more than one Investigator participated in the investigation.

State whether the other Investigator concurs with the contents of the report. Where corrections or additions are necessary, **follow** the procedures laid out in paragraph 2 of section 9, Chapter 11.

Show the date the investigation report was actually signed.

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Commissioner of Canada Elections
Commissaire aux élections fédérales

Appendix 1

Rapport d'enquête
Commissaire aux élections fédérales

Investigators' Report
Commissioner of Canada Elections

Date:

Page 1 of/de _______

Dossier/File #:

Classification: Protégé/Protected

Objet/Subject:

MODÈLE

SAMPLE

1- Introduction:

2- Information:

2- Sources:

4- Investigator's comments
(Please follow paragraph 3.8, Chapter 12, of this Manual)/
Commentaires de l'enquêteur
(S.v.p. vous conformer au paragraphe 3.8, chapitre 12, du présent manuel:

5- Attachments/Annexes:

6- Signature:

Elections Canada

CHAPTER 13

PROTECTION AND TRANSMISSION OF CORRESPONDENCE

Commissioner of Canada Elections

January 2004

Chapter 13

PROTECTION AND TRANSMISSION OF CORRESPONDENCE

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1. INTRODUCTION

This chapter provides general information about the management, protection and transmission of correspondence, evidence and court exhibits to and from the Commissioner's Office.

2. POLICY

Access to information relating to complaints is restricted and will only be released under the authority of the Commissioner of Canada Elections (the Commissioner).

Investigators are responsible and accountable to ensure that personal information, correspondence and documents related to an investigation remain confidential and are shown to, or discussed only with an authorised person. They are also responsible for the preservation and safeguard of all material related to an investigation. Any incidents affecting the preservation of material should be reported promptly to the Chief Investigator.

The Financial and Administrative Officer is responsible for ensuring that all correspondence routed to and from the Commissioner's Office is processed in accordance with record management practices.

All correspondence is logged in a system to ensure timely follow-up. Entries relating to complaints are made in the electronic database to allow for the production of statistical reports.

Photocopies of election documents[1] or other evidence will be transmitted to Investigators to assist in the conduct of the investigation. Originals of election documents will be provided to our agent as court exhibits.[2] The Chief Investigator will maintain a control access log of the movement of documentary evidence.

3. OUTWARD FLOW OF CORRESPONDENCE TO INVESTIGATORS

All correspondence should be transmitted either by Priority Post, fax machine or e-mail.

The Chief Investigator will prepare and sign a letter of assignment[3] to the Investigators concerned, which may be transmitted, either by Priority Post or by fax machine to their personal residence. Depending on the circumstances, the following procedures should be followed:

---

[1] See section 2 of the *Canada Elections Act* for the definition of "election documents". Also refer to Chapter 8 – *Access to records, books and documents*, and Chapter 10 – *Inspection, review and analysis of documents*, for more information on the handling of documents.

[2] Refer to Chapter 9 – *Collection, use and preservation of evidence*, for more information on the other essential requirements.

[3] Refer to Chapter 5 – *Direction and control of investigation*, for more information on this matter.

3.1 By fax machine

When a fax machine is used, the fax covering letter containing the required confidentiality caveat should also be used[4] and, when applicable, whether other documents will follow by Priority Post.

The fax activity report sheet constitutes an electronic confirmation that the correspondence was successfully sent by electronic means at the correct subscriber's telephone number and shall be retained on the complaint file.

3.2 By Priority Post

Where Priority Post is used, so as to prevent undetected tampering, the correspondence and documents should first be sealed in an inner envelope or suitable container, with wide high quality cellophane tape. Then, it should be addressed or labelled to the Investigator's residence and placed in a second outer envelope also addressed to the Investigator.

Mail transmitted by Priority Post, originating from the Commissioner's Office, shall be registered in a control ledger book maintained by Elections Canada's mailroom personnel. Priority Post record containing the signature of the addressee or representative ensures confirmation of delivery at destination. When required to establish the continuity of possession, the Elections Canada mailroom ledger and the Priority Post records will be secured as evidence.

3.3 In case of a problem

Investigators should immediately report any tampering with apparent loss of, or undue delay in the receipt of fax or Priority Post material which they had reason to believe had been forwarded to them by the Commissioner's Office.

4. OUTWARD FLOW OF CORRESPONDENCE TO AGENTS

Subject to the provisions of section 3 above, Senior Counsel to the Commissioner should determine the most economical and secure way for transmitting and receiving correspondence and possible court evidence[5] for the prosecution of an offence.

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[4] Refer to the sample *Fax Covering Letter* from the Office of the Commissioner of Canada Elections shown in Appendix 1, at the end of this chapter.

[5] *Supra*, footnote 2.

5. INWARD FLOW OF CORRESPONDENCE FROM INVESTIGATORS

Depending on the circumstances, and unless otherwise instructed by the Chief Investigator or Senior Counsel to the Commissioner, investigation reports,[6] material and documents related to an investigation should be prepared by Investigators in compliance with procedures contained in this Manual. Investigation reports may be sent to the Office of the Commissioner, either by Priority Post or by fax machine. However, voluminous or bulky documents and the original of any documentary or physical evidence[7] should only be sent by Priority Post. Investigators should proceed as follows.

5.1 By Priority Post

Envelopes or suitable containers should be prepared as described in paragraph 2 of section 3 above and correctly labelled to the following address:

Commissioner of Canada Elections
ATT.: Chief Investigator
257 Slater Street
Ottawa, Ontario
K1A OM6

Investigators should retain the copy of mail receipts issued by the post office or mail carrier company as a confirmation of the mail consignment and proof of continuity of possession of evidence.[8]

5.2 By fax machine

Where a fax machine is used, the sample fax covering letter[9] containing the required confidentiality caveat should be used. The fax activity report sheet should be retained by the Investigator as a confirmation of the successful electronic transmission at the correct fax number. When applicable, Investigators should also indicate whether the original copy of the investigation report or other voluminous documents will follow by Priority Post.

---

[6] Refer to Chapter 12 – *Investigation report format*, for more information on the other essential requirements.

[7] *Supra*, footnote 2.

[8] *Supra*, footnote 2.

[9] Refer to Appendix 2, *Fax Covering Letter*, at the end of this chapter.

6. PROCEDURES FOR TRANSMITTING OTHER CORRESPONDENCE AND MATERIAL

Because of the lower cost, Investigators should use ordinary post for mailing other correspondence such as their bi-monthly professional fees and disbursement expenses account,[10] but should keep a photocopy for their own accounting and accountability.

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[10] Refer to Chapter 25 – *Professional fees and disbursements*, for more information on this matter.

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Commissaire aux élections fédérales

Appendix 1

257 Slater
OTTAWA, Ontario
K1A 0M6

(613) 998-4051 / 1-800-267-7360

Fax/télécopieur (613) 990-4877

TO/À: ______________________________

FAX/TÉLÉCOPIEUR: ______________________________

FROM/DE: ______________________________

DATE: ____________________ No of pages: Cover + __________

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FAX COVERING LETTER – LETTRE D'ENVOI POUR TÉLÉCOPIEUR

Appendix 2

TO/À: Commissioner of Canada Elections / Commissaire aux élections fédérales
Att.: Chief Investigator / Enquêteur principal

FAX/TÉLÉCOPIEUR: 1-800-663-4908 or/ou 990-4877

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Elections Canada

CHAPTER 14

ASSESSMENT OF INVESTIGATION FINDINGS

Commissioner of Canada Elections

January 2004

ASSESSMENT OF INVESTIGATION FINDINGS

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1. INTRODUCTION

This chapter provides general information, direction and guidance to the Chief Investigator and the Assistant Chief Investigators in the assessment of investigation findings and the criteria to take into consideration.

2. RESPONSIBILITIES

It is the responsibility of the Chief Investigator and the Assistant Chief Investigators, when directed by the former, to complete an assessment of investigation findings in a timely and thorough manner, and to make such recommendations as may be necessary. Investigations should always be in compliance with the policies laid out in this manual.

The Commissioner of Canada Elections (the Commissioner) is responsible for the decision to approve the recommended course of action or taking any other action, which may be more appropriate under the circumstances.

3. PURPOSE OF ASSESSMENT

The primary objective is to review and assess the facts relevant to complaints in order to determine:

a) whether or not alleged infractions were committed and by whom;

b) whether, during the election period,[1] any act or omission is contrary to the *Acts*;[2] and

c) to make recommendations as may be necessary with respect to such complaints.

4. CRITERIA FOR ASSESSMENT

The Chief Investigator and the Assistant Chief Investigators should consider the following criteria for the review, analysis and assessment of investigation findings. They should focus on all relevant and important elements and assess extenuating circumstances that will assist the Commissioner in taking an appropriate course of action. The synopsis of their assessment report should include the following elements:

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[1] See section 2 of the *Canada Elections Act* for the definition of "election period".

[2] For the purposes of this manual, "*Acts*" include the *Canada Elections Act* and the *Referendum Act*.

a) a background summary of the alleged infractions;

b) details on the identity of the suspect[3] and of the complainant;

c) a brief outline of the status of the investigation, with an assessment of the results and a recommendation on whether or not to continue or terminate the investigation,[4] or a recommendation to initiate an investigation on new allegations which surfaced during the investigation;

d) where the investigation is completed, an assessment of all available facts and evidence to determine whether the alleged illegal activities may have been committed by any identifiable suspect;[5]

e) where an extensive investigation is recorded in voluminous correspondence, a "brief of evidence" with a chronological and logical reconstruction of events and activities related to the offence, the appropriate cross references tabbed to the original correspondence on the complaint file;

f) where appropriate, a brief summary of where, when, why and how each specific offence occurred, who was involved either as a suspect,[6] an accomplice or a witness;[7]

g) where applicable, a summary of the results of any verification or inspection of election documents;[8]

h) a summary of the assessment of the availability, credibility, competency and reliability of potential court witnesses;[9]

i) a recommended course of action with the rationale supporting the preferred option which may include a request for further instructions from the Office of the Commissioner.

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[3] Refer to Chapter 7 – *Official cautions*, for the definition of "suspect".

[4] Refer to Chapter 4 – *Investigation policy*, for the factors to consider.

[5] *Supra*, footnote 3.

[6] *Supra*, footnote 3.

[7] *Supra*, footnote 3, for the definition of "witness".

[8] Refer to Chapter 10 – *Inspection, review and analysis of documents*, for more information on the criteria and factors to consider.

[9] *Supra*, footnote 3.

5. CRITERIA FOR RECOMMENDATION TO CLOSE A COMPLAINT FILE AFTER AN INVESTIGATION

Where an assessment of an investigation, prepared under the supervision of the Senior Counsel to the Commissioner, may result in the recommendation to close a complaint file, the following factors[10] should be considered and set out in the assessment report:

a) whether the allegations are unsubstantiated by the facts or are rebutted by evidence from credible and reliable sources;

b) whether voluntary compliance measures were taken by the alleged offender to comply with the requirements of the *Acts*;

c) whether the advisability of considering administrative actions or entering into compliance agreements[11] as an alternative to prosecution;

d) whether other possible scenarios to explain the conduct of the suspect were investigated and whether findings exonerated that suspect and indicated that new suspects should be investigated;

e) whether the available facts suggest there was no apparent criminal intent or motive, where such an intent is required for the offence to have occurred;

f) whether other available avenues of investigation would be unlikely to produce compelling evidence;

g) whether, where there may be sufficient grounds to believe that an offence was committed, the evidence suggests, however, that there is a successful defence open to the suspect;

h) whether the date for filing an information for an alleged offence has expired or, in the case of an injunction, whether it could be obtained within the prescribed electoral timeframe.

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[10] Refer to Chapter 17 – *The decision to prosecute*, for the additional factors, which may be considered by Senior Counsel to the Commissioner in the recommendation to close a complaint file.

[11] Refer to Chapter 15 – *Compliance agreements*, for the criteria that must be considered.

1. INTRODUCTION

This chapter provides general information, direction and guidance in the assessment of factors that may affect the Commissioner's decision to enter into a compliance agreement, pursuant to section 517 of the *Canada Elections Act*.

2. ORIGIN OF COMPLIANCE AGREEMENTS

A 1998 parliamentary report[1] noted that the then existing *Canada Elections Act* could only be enforced by means of the criminal justice system. Since many of the violations under the *Act* were primarily administrative or regulatory in nature, the report identified a need for flexibility and discretion in enforcing the *Act*. Compliance agreements were consequently put forth as an alternative to the initiation of legal proceedings.

3. COMPLIANCE AGREEMENTS DEFINED

The parliamentary report mentioned above defines compliance agreements as follows: "Compliance agreements would be public documents based on voluntary agreement to put into place procedures or other actions that would be taken to ensure compliance with the *Act*."

A compliance agreement[2] enables the Commissioner to enforce the *Act* by means of a voluntary agreement. It is a formal written agreement between the Commissioner and a person referred to in the *Act* as a "contracting party"[3], whom the Commissioner believes on reasonable grounds, has committed, is about to commit or is likely to commit an act or omission that could constitute an offence under the *Act*. The purpose of the agreement is to provide the Commissioner with a new mechanism to ensure compliance with the *Act*.

A compliance agreement may contain any terms and conditions the Commissioner considers necessary to ensure compliance with the *Act*.[4] Before entering into a compliance agreement, the Commissioner shall advise the contracting party of the right to be represented by counsel and the Commissioner shall obtain the prospective contracting party's consent to publish[5] the agreement.

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[1] The Standing Committee on Procedure and House Affairs' thirty-fifth report on the *Canada Elections Act*, was presented to the House of Commons in June of 1998. It undertook a comprehensive review of recommendations and proposals for electoral reform. A recommendation dealing with the issue of compliance agreements was made by the Chief Electoral Officer in the 1996 Annex to the Report of the CEO on the 35th general election.

[2] See section 517 of the *Canada Elections Act*.

[3] See sections 517 to 521 of the *Canada Elections Act*.

[4] See subsection 517(2) of the *Canada Elections Act*.

[5] See subsection 517(3) and section 521 of the *Canada Elections Act*.

6. CRITERIA FOR RECOMMENDING THE CONTINUATION OF AN INVESTIGATION

Where an assessment of an investigation may result in the recommendation to further continue the investigation, the applicable factors contained in Chapter 4 – *Investigation policy*, apply. Where there exist possible links or interrelationships between elements of evidence of offences committed under the *Acts*, the *Criminal Code* (*CCC*) or the *Income Tax Act* (*ITA*), the following factors should also be considered:

a) the need to exchange information or coordinate the investigation with the Royal Canadian Mounted Police (RCMP) or Canada Customs and Revenue Agency to avoid departmental activities at cross purposes from each other;

b) whether further action by the Commissioner's Office could jeopardize the collection, use and admissibility of information and evidence relating to the *ITA* or the *CCC* investigation and proceedings.

6.1 Report requirements

The assessment report of investigation findings should clearly document the specific offences that are suspected, the name of the individuals involved, the name of the alleged offender and the rationale supporting a recommendation for enforcement action or to close a complaint file by the Commissioner.

When considering continuing an investigation, the assessment report should include:

- an outline of the objectives of any proposed follow-up investigation or enquiries;
- the scope and focus of the various phases and steps of the proposed investigation or inquiries;
- the name of the individuals to be interviewed;
- the information and evidence which are required and from whom;
- any other appropriate follow-up measures which could be considered by the Commissioner in his decision on how to address each specific alleged offence.

7. CRITERIA FOR RECOMMENDING THE LAYING OF AN INFORMATION

Where an assessment of a completed investigation may result in a recommendation to the Commissioner to lay an information,[12] the following factors should be considered:

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[12] Refer to Chapter 18 – *Consent of the Commissioner to prosecute*, for more information on the grounds of belief and the other essential elements required to lay an information under Form 2 of the *Criminal Code*, section 506.

a) whether the prohibited activity or the failure to comply with legal requirements is a specific offence under the *Acts* for which any person, if found guilty, is liable[13] to punishment;

b) whether where self-incriminating evidence was provided by a suspect,[14] the evidence is admissible[15] and was obtained in compliance with the principles and requirements of the *Charter of Rights and Freedom*;

c) whether investigation findings provide evidence[16] that an offence under the *Acts* was committed by a specific individual;

d) whether statements from witnesses[17] and documentary evidence corroborate all the elements which constitute the offence;

e) whether credible witnesses are available, willing to testify in court and would make competent court witnesses.

7.1 Report requirements

When considering recommending to the Commissioner to prosecute an alleged offence, the assessment report to the Commissioner should clearly document the factors that were considered to arrive at such a recommendation.

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[13] Refer to sections 480 to 508 of the *Canada Elections Act* for the specific legal reference concerning the punishment of offences, including corrupt or illegal practices.

[14] *Supra*, footnote 3.

[15] *Supra*, footnote 3, for the essential requirements to ensure the admissibility of self-incriminating evidence from a suspect.

[16] Senior Counsel to the Commissioner provides an opinion to the Commissioner if the evidence is substantial, admissible, reliable and provide a realistic prospect of conviction taking into consideration any defence available to the accused and any other factors that could affect the Commissioner's decision. Finally, whether the public interest requires a prosecution to be pursued is also assessed.

[17] *Supra*, footnote 3.

Elections Canada

CHAPTER 15

COMPLIANCE AGREEMENTS

Commissioner of Canada Elections

January 2004

Chapter 15

COMPLIANCE AGREEMENTS

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4. ANALYSIS OF SECTIONS 517 TO 521 ON COMPLIANCE AGREEMENTS

The following summarily analyses the particulars of sections 517 to 521[6] of the *Act*.

- **Discretionary power** – The Commissioner may enter into a compliance agreement as a means of ensuring that the *Act* is complied with,[7] providing the Commissioner has reasonable grounds to believe an offence has been or may be committed. The Commissioner will base the decision to proceed by means of a compliance agreement on a number of factors, such as the good faith of the contracting party and on whether a compliance agreement is a fair, efficient and appropriate method of ensuring compliance with the *Act*.

- **Offence under the** ***Act*** – The Commissioner may enter into a compliance agreement only when a *person* has committed, is about to commit or is likely to commit an offence under the *Act.*[8] The Commissioner may enter into such an agreement even if an information has been laid[9] against the contracting party.[10]

- **Contracting Party** – Subsection 517(1) states that the Commissioner may enter into a compliance agreement with a *person.*[11] The *Canada Elections Act* does not define the term "person" as it relates to compliance agreement. However, the *Act* provides that every person who being a third party or registered party may be liable of an offence under section 496 (third party offences) and section 497 (registered party offences). This would enable the Commissioner to enter into a compliance agreement with a third or registered party to enforce the *Act* as an alternative to prosecuting the offence committed by that third or registered party.[12]

- **Prerequisites** – Under subsection 517(3), the Commissioner must meet two conditions, as prerequisites to entering into a compliance agreement. The Commissioner must firstly advise the prospective contracting party of the party's right to be represented by counsel and provide this party with an opportunity to obtain counsel. Secondly, the Commissioner must obtain the party's consent to publish the compliance agreement once it has been completed.

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[6] See Appendix 1 for sections 517 to 521 of the *Canada Elections Act*, at the end of this chapter.

[7] See section 509 of the *Canada Elections Act*.

[8] See Chapter 19 for the definition of "offence".

[9] Refer to Chapter 17 – *The decision to prosecute*, which deals with this matter.

[10] See subsection 517(6) of the *Canada Elections Act*.

[11] For the purpose of sections 517 to 521 of the *Canada Elections Act*, "*person*" is called "*contracting party*".

[12] "*Political party*" is not defined in the *Canada Elections Act*, but "*registered party*" is defined in section 2 as follows: "*means a political party that is entered in the registry of parties referred to in section 374 as a registered party.*" "*Third party*" is defined in section 349 of the *Canada Elections Act* as follows: "*means a person or a group, other than a candidate, registered party or electoral district association of a registered party.*" Third parties, eligible parties, registered parties, deregistered political parties and electoral district associations, pursuant to sections 504 and 505 of the *Act*, can be prosecuted for an offence under the Act.

- **Evidence required** – There must exist reasonable grounds to lead the Commissioner to believe that a person has committed, is about to commit or is likely to commit an act or omission that could constitute an offence under the *Act*. This belief must be based on facts that can be verified or corroborated through interviews, inspection of relevant documents or other avenues of investigation likely to produce compelling evidence of the commission of an offence, or of facts which reasonably lead to the conclusion that a person is about to commit or is likely to commit an act or omission that could constitute an offence. The Commissioner's decision to proceed must be founded on all available evidence.

- **Terms and conditions** – The Commissioner may include in the compliance agreement any terms and conditions that may be considered necessary to ensure compliance with the *Act*. For example, the terms may indicate what actions should be taken to correct the default. Other terms and conditions could include monetary restitution for damages.

- **Statement admitting responsibility** – A compliance agreement may include a statement by the contracting party admitting responsibility for the act or omission that constitutes an offence.[13] Such an acknowledgement of non-compliance would not constitute an acknowledgement of guilt in the criminal law sense. It is simply an acknowledgement that the administrative requirements of the *Act* have not been met. The decision to include such a statement in the compliance agreement is made by the Commissioner and agreed upon by the contracting party.

- **Not admissible in evidence** – The fact that a contracting party has entered into a compliance agreement is not admissible in evidence against the contracting party in any civil or criminal proceedings.[14] Similarly, the fact that a statement acknowledging responsibility is included in a compliance agreement is not admissible[15] in any court proceedings. However, any self-incriminating statement otherwise legally obtained during an investigation,[16] would still be admissible evidence in a prosecution.

- **Prosecution suspended** – When a compliance agreement is entered into, any prosecution of the contracting party for an act or omission covered by such agreement is suspended[17] and the Commissioner is prevented from instituting a prosecution for such an act or omission. However, the suspension ceases where the contracting party is in default with any of the conditions set out in the agreement.

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[13] See subsection 517(4) of the *Canada Elections Act*.

[14] See subsection 517(5) of the *Canada Elections Act*.

[15] See subsection 517(5) of the *Canada Elections Act*.

[16] Refer to Chapter 7 – *Official cautions*, for more information on the necessary requirements.

- **Renegotiations** – The Commissioner and the contracting party may renegotiate the terms of the compliance agreement at the request of the contracting party at any time before it is fully executed.[18]

- **Copy of the agreement to be provided** – The Commissioner provides the contracting party with a copy of a compliance agreement without delay after the agreement is entered into or renegotiated.[19]

- **Notice of compliance - prosecution terminated** – If the Commissioner is of the opinion that the compliance agreement has been complied with, the Commissioner shall cause a notice to that effect to be served on the contracting party. This terminates any prosecution of the contracting party or prevents the Commissioner from instituting such a prosecution.[20]

- **Notice of default** – If the Commissioner is of the opinion that the contracting party has not complied with the compliance agreement, the Commissioner causes a notice of default to be served on the contracting party and may take whatever action the Commissioner considers will ensure compliance with the *Act*.[21]

- **Publication of notice** – The Commissioner shall publish a notice setting out the contracting party's name, the act or omission that could constitute an offence and a summary of the compliance agreement.[22] The contracting party must have previously agreed to the publication of the agreement. To ensure transparency, no compliance agreement will be entered into by the Commissioner unless the contracting party agrees to its publication.

5. INVESTIGATIVE RESPONSIBILITIES OF INVESTIGATORS

Depending on the circumstances and the specifics of the alleged offence, the Commissioner may approve an investigation to obtain all available information to make an informed decision. The Chief Investigator[23] will provide Investigators with information required for their assignment.

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[17] See subsection 517(6) of the *Canada Elections Act.*

[18] See subsection 517(7) of the *Canada Elections Act.*

[19] See subsection 517(8) of the *Canada Elections Act.*

[20] Subsections 518(1) & (2) of the *Canada Elections Act.*

[21] See section 519 of the *Canada Elections Act.*

[22] See section 521 of the *Canada Elections Act.*

As the Commissioner will decide on how to proceed after analysing the results of the investigation, the same rigour and professionalism shall be used to obtain all available information and evidence in every case. This includes ensuring the necessary steps are taken to protect the rights[24] of any suspect[25] under investigation.

If asked whether the investigation is for the purpose of a compliance agreement, Investigators should emphasise that the decision to prosecute or proceed by means of a compliance agreement lies strictly with the Commissioner. Investigators must not speculate on the outcome of the investigation. A neutral approach must be taken to ensure that the options available to the Commissioner under the *Act* are not jeopardised by anyone's misconception or belief that by co-operating with the investigation a prosecution will be avoided.

Investigators are expected to document all relevant details that will assist the Commissioner in determining the appropriate course of action.

6. INVESTIGATION'S ASSESSMENT REPORT

The assessment report of the investigation findings, prepared under the supervision of the Senior Counsel to the Commissioner, should clearly document the findings and conclusions, the specific offences under the *Act*, the name of the individuals involved and the names of the suspects. The assessment report will, with reference to the criteria listed below, provide recommendations for the Commissioner's consideration.

All relevant circumstances and factors to be considered include, but are not restricted to, the following criteria:

a) whether sufficient and reasonable grounds exist to believe that the allegations relate to a specific offence under the *Act*;[26]

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[23] Refer to Chapter 5 – *Direction and control of investigation*, for more information on the contents of a letter of assignment.

[24] Refer to Chapter 7 – *Official cautions*, and Chapter 8 – *Access to records, books and documents*, for more information on the specific requirements, which must be considered.

[25] *Supra*, footnote 21 for the definition of a "suspect".

[26] See section 514 of the *Canada Elections Act*.

b) whether there are credible witnesses,[27] witness statements,[28] or documentary evidence to support the allegations that an offence under the *Act* was committed;

c) whether the alleged offender has taken immediate corrective action or complied voluntarily;

d) whether there is sufficient evidence for a likely conviction, or whether there are reasonable and probable grounds to believe that there is a successful defence[29] open to the suspect;

e) whether there is sufficient information to identify the alleged suspects[30] or the persons authorised to negotiate a compliance agreement;

f) whether, given the seriousness of the offence and the weight of the evidence, the public interest would not be served by entering into a compliance agreement;

g) whether the alleged offender seeks a compliance agreement;

h) whether alternative procedures can be put in place to achieve compliance.

7. RESPONSIBILITIES OF COUNSEL WITH RESPECT TO COMPLIANCE AGREEMENTS

Where the Commissioner is satisfied that the circumstances warrant enforcement action by way of a compliance agreement, Counsel will prepare the necessary documentation, including the terms and conditions that should be included in the agreement to ensure compliance with the *Act*.[31]

Counsel will inform the contracting party of their right to be represented by counsel, determine that the prospective contracting party consents to the publication of the agreement and obtain the necessary information for the Commissioner's consideration.

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[27] *Supra*, footnote 21.

[28] Refer to Chapter 11 – *Interview techniques*, for more information on the necessary requirements for admissible evidence.

[29] Refer to Chapter 17 –*The decision to prosecute*, for more information on the other public interest factors, which must be considered.

[30] *Supra*, footnote 21, for the definition of "suspect".

[31] See section 517 of the *Canada Elections Act*.

8. SUPPORT ROLE OF INVESTIGATORS ONCE NEGOTIATIONS HAVE BEGUN

Once the determination has been made to enter into negotiations with a contracting party for a compliance agreement, the role of the Investigator is one of support. In that capacity, Investigators may be asked to obtain or to serve documents on behalf of the Commissioner.

The Commissioner may direct Investigators to determine if the contracting party has carried out the terms and conditions of the compliance agreement.

8.1 In case of default

Where it is determined that the contracting party failed to carry out the terms and conditions of the compliance agreement, the Commissioner may institute or re-institute legal proceedings against the contracting party. Investigators may be directed to lay an information and to act in a support role to the appointed legal agent.[32] They should submit timely reports concerning their assistance in the prosecution and their discussions with the legal agent.

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[32] Refer to Chapter 18 – *Consent of the Commissioner to prosecute*, for more information on the responsibilities of Investigators related to laying an information.

APPENDIX 1

Sections 517 to 521 of the *Canada Elections Act*

517. (1) If the Commissioner believes on reasonable grounds that a person has committed, is about to commit or is likely to commit an act or omission that could constitute an offence under this Act, the Commissioner may enter into a compliance agreement, aimed at ensuring compliance with this Act, with that person (in this section and sections 518 to 521 called the ``contracting party").

(2) A compliance agreement may contain any terms and conditions that the Commissioner considers necessary to ensure compliance with this Act.

(3) Before entering into a compliance agreement, the Commissioner shall
(a) advise the prospective contracting party of the right to be represented by counsel and give him or her an opportunity to obtain counsel; and
(b) obtain the consent of the prospective contracting party to the publication of the agreement under section 521.

(4) A compliance agreement may include a statement by the contracting party in which he or she admits responsibility for the act or omission that constitutes the offence.

(5) The fact that a compliance agreement was entered into, and any statement referred to in subsection (4), are not admissible in evidence against the contracting party in any civil or criminal proceedings.

(6) When a compliance agreement is entered into, any prosecution of the contracting party for an act or omission that led to it is suspended and, unless there is non-compliance with it, the Commissioner may not institute such a prosecution.

(7) The Commissioner and the contracting party may renegotiate the terms of the compliance agreement at the request of the contracting party at any time before it is fully executed.

(8) The Commissioner shall provide the contracting party with a copy of a compliance agreement or renegotiated compliance agreement to which it is a party without delay after the agreement is entered into or renegotiated, as the case may be.

***518.** (1) If the Commissioner is of the opinion that the compliance agreement has been complied with, the Commissioner shall cause a notice to that effect to be served on the contracting party.*

Effect of notice

(2) Service of the notice terminates any prosecution of the contracting party that is based on the act or omission in question and prevents the Commissioner from instituting such a prosecution.

***519.** If the Commissioner is of the opinion that the contracting party has not complied with the compliance agreement, the Commissioner shall cause a notice of default to be served on the contracting party, informing him or her that the Commissioner may institute proceedings against them in respect of the original act or omission or, if such proceedings have been instituted and suspended by virtue of paragraph 517(6)(a), they may be resumed.*

***520.** The court shall dismiss proceedings instituted or resumed under section 519 if it is satisfied on a balance of probabilities that the contracting party has totally complied with the compliance agreement or, in the case of partial compliance and taking into account the contracting party's performance with respect to the agreement, is of the opinion that the proceedings would be unfair.*

***521.** The Commissioner shall publish, in the manner and form that he or she considers appropriate, a notice that sets out the contracting party's name, the act or omission in question and a summary of the compliance agreement.*

APPENDIX 2

Extract of the Standing Committee on Procedure and House Affairs' thirty-fifth report on the Canada Elections Act

10.0 Offences and Enforcement

At present, the *Canada Elections Act* can only be enforced by employing the criminal justice system. The Act treats all violations as criminal offences, when they are primarily administrative or regulatory in nature. Under the current system, there is little room for flexibility or discretion. The Royal Commission on Electoral Reform and Party Financing and the Special Committee on Electoral Reform both believed that there needed to be a new approach to election law enforcement.

10.0 Infractions et application de la Loi

En ce moment, la seule façon de faire exécuter la *Loi électorale du Canada* est d'avoir recours au système de justice pénale. La Loi considère toutes les violations comme des infractions criminelles alors qu'elles sont surtout de nature administrative ou réglementaire. Il y a peu de place à la souplesse ou à l'exercice d'un pouvoir discrétionnaire dans le système actuel. La Commission royale sur la réforme électorale et le financement des partis et le Comité spécial sur la réforme électorale croyaient tous deux qu'il fallait une nouvelle approche à l'exécution des dispositions électorales.

10.1 In his 1996 Annex, the Chief Electoral Officer recommended that the Commissioner of Canada Elections be empowered to enter into compliance agreements and to issue compliance orders. The Commissioner of Canada Elections is the official appointed under the

10.1 Dans son annexe de 1996, le directeur général des élections recommande que le commissaire aux élections fédérales soit habilité à conclure des accords de conformité et à émettre des ordonnances de conformité. Le commissaire aux élections fédérales decide whether to institute legal proceedings in respect of any alleged infraction of the Act.

The argument of the Chief Electoral Officer was that, while the criminal justice process may be necessary for violations that can influence the outcome of an election or undermine the integrity of the electoral process, it is inappropriate for dealing with offices of an administrative or regulatory nature. Moreover, the courts appear to be reluctant to treat all infringements of the Act as criminal offences, with the result that, when found guilty, respondents are often merely fined or conditionally discharged. The solution is to investigate alternatives to criminal procedures to ensure compliance with the Act. The Office of the Chief Electoral Officer submitted a report on these to the Special Committee on Electoral Reform in 1992, and included an adaptation of this report in *Strengthening the Foundation.* Among the alternatives are compliance agreements and compliance orders, which are non-criminal, non-judicial procedures. Responsibility for the administration of these would rest with the Commissioner of Canada Elections, who would apply them in accordance with certain criteria, including: the nature and gravity of

Loi pour mener des enquêtes et décider s'il y a lieu d'intenter des poursuites judiciaires pour toute infraction présumée à la Loi.

D'après le directeur général des élections, si des poursuites au criminel peuvent s'avérer nécessaires dans le cas d'infractions risquant d'influencer les résultats d'une élection ou miner l'intégrité du processus électoral, elles ne conviennent pas dans le cas de dérogations d'ordre administratif ou réglementaire. Qui plus est, les tribunaux semblent réticents à traiter tous les manquements à la Loi comme des actes criminels. Aussi les contrevenants sont-ils souvent simplement mis à l'amende ou libérés sous condition. Il s'agit donc d'examiner les solutions de rechange aux procédures criminelles pour assurer le respect de la Loi. Le Bureau du directeur général des élections a présenté un rapport à cet effet au Comité spécial sur la réforme électorale, en 1992, et a inclus dans *Consolider les assises* une adaptation de ce rapport. Parmi les options envisagées se trouvent les accords de conformité et les ordonnances de conformité, les deux étant des solutions de rechange aux poursuites judiciaires. L'administration de ces mécanismes relèverait du commissaire aux élections fédérales, qui les

the contravention; the record, if any of contravention; the confidence of the public in the electoral process; the desirability of achieving compliance through measures that are remedial rather than punitive; the cost of enforcement; fairness to the person in contravention; and any public interest that the Commission considers relevant. Compliance agreements would be public documents based on voluntary agreement to put into place procedures or other actions that would be taken to ensure compliance with the Act. Compliance orders, on the other hand, would be issued unilaterally by the Commissioner and would allow a problem to be dealt with quickly and effectively as warranted by circumstances and within the bounds of fairness. Such a power would be similar to that existing in other regulatory regimes, and would allow an appeal to the courts by way of an appeal on the merits. Under such an arrangement, fines can be reduced or cancelled for those who agree to take appropriate steps to ensure future compliance.

appliquerait en fonction des critères suivants : nature et gravité de l'infraction; fréquence des infractions, le cas échéant; confiance du public dans le processus électoral; avantages que donneraient les mesures de redressement par rapport aux mesures punitives, pour assurer la conformité; coût des mesures d'exécution; équité envers le contrevenant; tout autre élément jugé d'intérêt public par le commissaire. Les accords de conformité seraient des documents publics fondés sur un engagement volontaire à mettre en place des procédures ou d'autres mesures susceptibles d'assurer le respect de la loi. Les ordonnances de conformité, en revanche, seraient prises unilatéralement par le commissaire et permettraient de traiter un problème aussi rapidement et efficacement que possible et en toute équité. Un tel pouvoir serait analogue que celui que prévoient d'autres régimes de réglementation et permettrait de saisir les tribunaux par la voie d'un appel sur le fond. En vertu d'un arrangement de cette nature, il serait possible de réduire ou d'annuler les amendes de ceux qui acceptent de prendre les dispositions nécessaires pour se conformer dorénavant à la loi.

As was said in *Strengthening the Foundation*, "These compliance procedures afford a flexible means of fairly achieving the objectives of the *Canada Elections Act* in a manner consistent with other administrative or regulatory schemes while reserving the full weight of the criminal process for those offences that might more immediately affect the outcome of an election." (p. 73) Members of the Committee are in agreement with this proposal.

Comme il est dit dans *Consolider les assises*, « Ces mécanismes permettraient de réaliser de façon souple et équitable les objectifs de la *Loi électorale du Canada*. Ils seraient conformes à d'autres modalités administratives ou réglementaires, et réserveraient les poursuites au criminel aux seules infractions susceptibles d'influer directement sur l'issue d'une élection » (p. 73). Les membres du Comités souscrivent à cette proposition.

Elections Canada

CHAPTER 16

INJUNCTIONS

Commissioner of Canada Elections

January 2004

INJUNCTIONS

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1. INTRODUCTION

This chapter provides general information, direction and guidance in the assessment of factors that may affect the Commissioner's decision to seek an injunction pursuant to section 516 of the *Canada Elections Act.*[1]

2. ORIGIN AND PURPOSE OF SECTION 516

The Standing Committee on Procedure and House Affairs' thirty-fifth report on the *Canada Elections Act*, presented to the House of Commons in June of 1998, identified a need for flexibility and discretion in enforcing the *Act.*[2] The section 516 *Injunctions* provides the Commissioner with an additional discretionary method of enforcement.

Parliament created this express authority of the Commissioner to seek injunctions in an effort to avoid potential difficulties respecting the ability of persons to procure common law injunctive relief and the legal tests which had to be met in order to do so. The *Canada Elections Act* provides a new test for injunctive relief better suited to electoral matters, in order to ensure that the injunction remedy would be accessible under the *Act*.

Section 516 of the *Act* provides the Commissioner with a means of seeking compliance with the *Act* during the electoral period by obtaining an order from the Court. This order may constrain a person to do an act required by the *Canada Elections Act* or require them to refrain from doing an act that is contrary to the *Canada Elections Act*.

3. DEFINITION AND PROCESS

3.1 Evidence requirements

Subsection 516(1) of the *Canada Elections Act* provides the conditions that must be met when applying to a competent tribunal for an injunction. Subsection 516(2) provides direction to the Court in assessing whether or not to issue an injunction.

The following analyses section 516 evidentiary requirements that must be met for the Commissioner to successfully obtain a statutory injunction.

- **Contrary to the *Act*** - the Commissioner must have reasonable grounds to believe that the alleged act or omission is contrary to the *Act*; this includes all acts or omissions contrary to the *Act* even though they may not be designated as offences.

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[1] See section 516 of the *Canada Elections Act*, found in Appendix 1 at the end of this chapter.

[2] The Standing Committee on Procedure and House Affairs' thirty-fifth report on the *Canada Elections Act*, was presented to the House of Commons in June of 1998. It contained a comprehensive review of recommendations and proposals for electoral reform. This recommendation was initially formulated in the 1996 Annex to the Report of the CEO on the 35th general election.

The *Act* enables the Commissioner to apply for an injunction in the following three cases; the Commissioner must have reasonable grounds to believe that an act or omission that is contrary to this *Act*:

1. has been committed,
2. is about to be committed or
3. is likely to be committed.

The provision of the *Act* that has been contravened must be identified.

- **During election period** – the Commissioner may only make an application for an injunction during an election period.[3]

- **Fairness of the electoral process** – the act or omission must affect the fairness of the electoral process. The term "*fairness of the electoral process*" is not defined in the *Act*. This term would, for example, cover situations in which the results of the election would be affected if no injunction were issued, or again, situations in which the act or omission would adversely affect the integrity and openness of the electoral process.

- **Nature and seriousness of the act** – there must be evidence demonstrating that the nature and seriousness of the act or omission requires immediate action to be taken during the election period.

- **Public interest** – the Commissioner considers whether the public interest requires the intervention of the Court during the election period. This would require extraordinary circumstances that can only be corrected by seeking a Court intervention during that period.

- **48-hour notice** – this notice will afford a person in default a last opportunity to comply with the *Act*, or give the respondent an opportunity to prepare a counter-argument before the Court rules on the injunction. The 48-hour notice may be waived if the urgency of the situation is such that service of the notice would not be in the public interest.

4. COMPLAINANT'S ROLE

Since the Commissioner may apply for an injunction only during an election period, it is imperative that the complainant communicates to the Commissioner, in a timely fashion, all pertinent information under the complainant's control, that may be required to form the basis of an application for an injunction; any delay in providing such information may adversely affect the likelihood of requesting and obtaining the injunction remedy in the timeframe imposed by the *Act*. The required information would include:

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[3] Pursuant to section 2 of the *Canada Elections Act*, the definition of "election period" is: "*The period beginning with the issue of the writ and ending on polling day, or where the writ is withdrawn under subsection 59(1) or is deemed to be withdrawn under section 543, on the day that the writ is withdrawn or deemed to be withdrawn*"

- All documentary evidence
- All physical evidence
- The complainant's testimonial, preferably presented as an affidavit
- Any other witness' testimonials, preferably presented as an affidavit
- All available information concerning the identity and whereabouts of the suspect and other individuals able to confirm the evidence

5. ASSESSMENT CRITERIA TO BE CONSIDERED BY THE INVESTIGATOR

The following criteria should be considered in conducting a preliminary assessment of the allegations and of the viability of applying for an injunction:

a) whether the act or omission[4] is contrary to the *Act;*[5]

b) whether sufficient and reasonable grounds exist to believe the act or omission was committed, is about to be committed or is likely to be committed during the election period;

c) whether the act or omission contrary to the *Act* is based on verifiable facts that can be ascertained through possible avenues of investigation such as reliable and credible witnesses, affidavits, witness statements or documentary evidence to establish the necessary elements of an injunction;

d) whether an investigation is likely to result in the identification of a suspect.[6] Whether sufficient information exists concerning the full identity and address of the suspect in order to serve a notice or summons to appear in Court. Where such information is not on file, are there possible investigative avenues available for obtaining this information?

e) whether there is sufficient time for collecting evidence or obtaining the affidavits required for an injunction application;

f) whether sufficient verifiable facts, sound rationale and reasons exist supporting the belief that the allegations are serious enough to affect the fairness of the electoral process;

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[4] Refer to Appendix 2 at the end of this chapter for a list of possible offences contrary to the *Canada Elections Act* occurring during *the election period*, which, depending on the evidence, may require an assessment to determine whether to recommend to the Commissioner an application for an injunction.

[5] **Note:** It is not necessary that the act or omission be an offence under the *Act*.

[6] Refer to Chapter 7 – *Official cautions*, for the definition of a "suspect".

g) whether the suspect has been informed that the act or omission committed, about to be committed or likely to be committed is contrary to the *Act*;

h) whether the suspect refused to comply with the provisions of the *Act*;

i) whether any administrative measures exist to resolve the matter and have been exhausted;

j) whether the suspect has taken corrective action or voluntarily complied with the requirements of the *Act*;

k) whether an injunction would be the proper remedy to ensure compliance with the provisions of the *Act*. Would the public interest best be served by other action such as a compliance agreement or a prosecution?

l) whether proper cause and reasons exist on which a Court should issue an injunction order under the *Act*;

m) whether a 48-hour notice is feasible.

6. ASSESSMENT REPORT

The assessment report should clearly document the findings and conclusions, including the specific act or omission that is contrary to the *Act*, the name of the individuals involved, the name of the suspect and the rationale. It should be supported by comments that will assist the Commissioner in determining the appropriate course of action.

When considering an investigation in order to obtain evidence for an injunction, the report should provide an outline of the usual requirements,[7] should assess the applicable investigation threshold test and standards[8] and provide an assessment of the applicable public interest factors that will be served by an injunction.

7. WORK ASSIGNMENT

Where the Commissioner is satisfied that an act or omission contrary to the *Act* warrants an investigation, the Chief Investigator, at the request of the Commissioner or Senior Counsel to the Commissioner, prepares the work assignment. Investigators are responsible for conducting and completing such investigations within the prescribed timeframe: as a rule, investigations relating to an injunction remedy will be given priority over other investigations.

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[7] Refer to section 6.1 of Chapter 3 – *Preliminary assessment of alleged infractions*, for the elements that must be considered.

[8] Refer to Chapter 4 – *Investigation policy*.

8. INJUNCTION APPLICATION PROCESS

Where the Commissioner has determined that an application for an injunction should be made, Senior Counsel to the Commissioner will ensure the necessary documents are prepared and an ad-hoc Counsel is appointed.

Senior Counsel to the Commissioner will address the following elements:

a) determine the Court of competent jurisdiction;[9]

b) identify the legal agent who will act as agent for the Commissioner for the purpose of the injunction proceeding;

c) confirm the proper procedures for filing the request for an injunction and necessary supporting documents;

d) prepare the necessary documents stating:
  - the remedy sought from the Court
  - the alleged facts in chronological order
  - the issues and considerations the Court should review
  - the inconvenience and the delays
  - the arguments
  - the evidence
  - the points of law with supporting facts
  - affidavits supporting the application, including the grounds which lead the Commissioner to believe an act or omission contrary to the *Act* was committed or is about to be committed, where mentioned in the affidavits;

e) ensure proper service of the notice of application, the summons to appear in Court and the disclosure of all documents to the respondent;

f) request a date for the hearing;

g) determine the duration of the injunction;

h) prepare the necessary documents for a contempt of Court application, where the injunction is infringed or not obeyed.

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[9] See subsection 525(1) of the *Canada Elections Act* for the list of competent courts.

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9. ROLE OF INVESTIGATORS ONCE APPLICATION MADE

Where necessary, Investigators will be contacted by Senior Counsel to the Commissioner for assistance in the presentation at the hearing of evidence they obtained during an investigation. They may also be asked to appear as a witness. Investigators should seek instructions from Senior Counsel to the Commissioner or the Chief Investigator. They must also submit timely reports concerning their involvement in injunction proceedings and any discussions with the legal representative of the Commissioner.

The rules concerning the service of notice and summons vary from one province to another. The law enforcement agency in the judicial district where the injunction application is filed will be retained to serve the notices and summons, unless otherwise instructed by Senior Counsel to the Commissioner.

10. CONTEMPT OF COURT PROCEEDINGS

The penalties for a breach of an injunction are not tied to any penalties that the *Canada Elections Act* might set respecting the act or omission which was the subject of the injunction. In the case of a breach of an injunction, the penalty is imposed for disobeying the order of the court.

An injunction can be enforced as a breach of a court order under the *Criminal Code*[10] or by civil contempt proceedings. In the case of criminal proceedings under the *Criminal Code*, the person can be guilty of an indictable offence and liable to imprisonment for a term not exceeding two years. In the case of civil contempt proceedings, the person can be subject to whatever fine the court feels is appropriate in light of the seriousness of the breach of the order or for imprisonment for up to five years.

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[10] See section 127 of the *Criminal Code*, which stipulates that anyone found guilty of court contempt for disobeying a Court Order is liable to a maximum penalty of two years imprisonment.

APPENDIX 1

Section 516 of the *Canada Elections Act*

516. (1) If the Commissioner has reasonable grounds to believe that a person has committed, is about to commit or is likely to commit an act or omission that is contrary to this Act, the Commissioner may, during an election period, after taking into account the nature and seriousness of the act or omission, the need to ensure fairness of the electoral process and the public interest, apply to a competent court described in subsection 525(1) for an injunction described in subsection (2).

(2) If the court, on application by the Commissioner under subsection (1), is satisfied that there are reasonable grounds to believe that a person has committed, is about to commit or is likely to commit an act or omission that is contrary to this Act, and that the nature and seriousness of the act or omission, the need to ensure fairness of the electoral process and the public interest justify the issuing of an injunction, the court may issue an injunction ordering any person named in the application to do one or both of the following:
(a) refrain from committing any act that it appears to the court is contrary to this Act; and
(b) do any act that it appears to the court is required by this Act.

(3) No injunction may be issued under subsection (2) unless at least 48 hours notice is given to each person named in the application or the urgency of the situation is such that service of notice would not be in the public interest.

APPENDIX 2

List of possible offences occurring during the election period

1. Inciting others to act or conspiring to act in a disorderly manner with the intention of preventing the transaction of the business of a public electoral meeting.[1]
2. Offering a bribe to influence electors to vote or refrain from voting.[2]
3. Willful failure by a Returning Officer to take necessary proceedings[3] to enable election to be held.
4. Disclosure of information for unauthorized purposes by an election officer.[4]
5. Engaging in politically partisan conduct by an election officer.[5]
6. Refusal to give candidate or his/her representative access to building for canvassing purposes.[6]
7. Willful prohibition of election advertising posters on residential premises of a tenant by a landlord or a condominium corporation.[7]
8. Failure to indicate authority for election advertising.[8]
9. Removal, covering or altering any election advertisement without the consent of the person whom authorized it.[9]
10. Using government means of transmission to carry out election advertising.[10]

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[1] See subsection 480(2) of the *Canada Elections Act.*

[2] See subsection 481(1) of the *Canada Elections Act.*

[3] See subsections 484(2) and 24(3) of the *Canada Elections Act.*

[4] See paragraph 484(3)(b) and subsection 3(2) of the *Canada Elections Act.*

[5] See paragraph 484(3)(c) and subsection 24(6) of the *Canada Elections Act.*

[6] See subsection 486(2) and section 81 of the *Canada Elections Act.*

[7] See subsection 495(2) and section 322(1) of the *Canada Elections Act.*

[8] See paragraph 495(1)(a) and section 320 of the *Canada Elections Act.*

[9] See paragraph 495(2)(b) and section 325 of the *Canada Elections Act.*

[10] See subsections 495(5) and 321(1) of the *Canada Elections Act.*

11. Willful inducement by a foreigner concerning the exercise by an individual of the right to vote.[11]

12. Failure to identify self in an electoral advertisement by a third party.[12]

13. Failure to register by a third party.[13]

14. Use of foreign contributions[14] or anonymous contributions[15] by a third party.

15. Making or publishing a false statement of fact in relation to the personal character or conduct of a candidate or prospective candidate with the intention of affecting the results of an election.[16]

16. Knowingly publishing a false statement of the withdrawal of a candidate.[17]

17. Unauthorized printing of ballots.[18]

18. Failure to provide ballots or return extra ballot papers by a printer.[19]

19. Printing of ballot with intent to influence vote.[20]

20. Failure to provide the required survey information or to provide report on survey results.[21]

21. Failure to indicate survey not based on recognized statistical method by a broadcaster or network operator.[22]

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[11] See subsection 495(3) and section 331 of the *Canada Elections Act*.

[12] See subsection 496(1) and section 352 of the *Canada Elections Act*. Provision currently challenged. On September 4, 2003, the Supreme Court of Canada announced that it will hear the constitutional challenge.

[13] See paragraph 496(1)(c) and subsection 353(1) of the *Canada Elections Act*. *Supra*, footnote 22.

[14] See subsection 496(1) and section 358 of the *Canada Elections Act*.

[15] See subsections 496(1) and 357(3) of the *Canada Elections Act*.

[16] See subsection 486(3) and section 91 of the *Canada Elections Act*.

[17] See subsection 486(3) and section 92 of the *Canada Elections Act*.

[18] See section 488 and paragraph 126(b) of the *Canada Elections Act*.

[19] See paragraph 488(2)(a) and subsection 116(5) of the *Canada Elections Act*.

[20] See paragraph 488(2)(b) and section 126 of the *Canada Elections Act*.

[21] See paragraph 495(1)(b) and section 326 of the *Canada Elections Act*.

[22] See sections 495 and 327 of the *Canada Elections Act*.

22. Broadcasting outside of Canada, during an election, of any matter, election advertisement, and speech with respect to an election, with intent to influence the result of an election.[23]

23. Failure to make broadcasting time available,[24] to make additional broadcasting time available,[25] or free broadcasting time available[26] by a broadcaster or network operator.

24. Incurring expenses for election advertising by electoral district association[27], or doing it willfully.[28]

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[23] See paragraph 495(4)(e) and subsections 330(1) and (2) of the *Canada Elections Act*.

[24] See paragraph 495(4)(f) and 335 (2)of the *Canada Elections Act*.

[25] See paragraph 495(4)(g) and subsections 339(3) and (4) of the *Canada Elections Act*.

[26] See paragraph 495(4)(g) and subsection 345(1) of the *Canada Elections Act*.

[27] See paragraph 497(1)(*h*.02) and section 403.04 of the *Canada Elections Act*.

[28] See paragraph 497(3)(*f*.02) and section 403.04 of the *Canada Elections Act*.

Elections Canada

CHAPTER 17

THE DECISION TO PROSECUTE

Commissioner of Canada Elections

January 2004

Chapter 17

THE DECISION TO PROSECUTE

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1. INTRODUCTION

This chapter provides general information on the duties and responsibilities of the Commissioner of Canada Elections (the Commissioner) with respect to the decision to enforce the *Acts*[1] by way of prosecution.

In some cases, it may be appropriate for the Commissioner and Senior Counsel to the Commissioner to obtain the views of the Chief Investigator when determining whether the public interest requires a prosecution be commenced or continued. Ultimately however, the course of action that the Commissioner adopts in particular cases must be the Commissioner's decision.

The Commissioner must, for this purpose, be and appear to be an independent officer.

2. STATUTORY POWERS OF THE COMMISSIONER

Except for offences for which an election officer has already taken measures, such as those relating[2] to peace and good order, personation, attempts to vote twice or when not qualified to vote, all offences under the *Acts* can be prosecuted only with the written consent of the Commissioner.

Under sections 511 and 512 of the *Act*, Parliament has given the Commissioner the discretion to consent to prosecutions instituted under the *Acts*. As such, the Commissioner, independent of Government, exercises powers under the Acts similar to those of the Attorney General of Canada for statutory offences under all other federal acts.[3] The consent of the Commissioner to institute a prosecution must be given personally and in writing.[4]

3. PROSECUTION - POLICY OF THE COMMISSIONER

In exercising the discretion of whether to institute prosecution, or to continue a prosecution, the Commissioner applies the following criteria:

a) first, determining if the evidence is sufficient to justify the institution or continuation of proceedings;

b) second, where satisfied that the evidence can justify proceedings, the Commissioner then considers whether the public interest requires action by way of prosecution, injunction or compliance agreement.

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[1] For the purpose of this manual, "*Acts*" include the *Canada Election Act* and the *Referendum Act*.

[2] See subsections 479(3) and 512(2) of the *Canada Elections Act*.

[3] Re: *Warren* and *The Queen* (1981) 61 C.C.C. (2d) 65.

[4] Refer to section 512 of the *Canada Elections Act*.

Only when the Commissioner is of the opinion that there is sufficient evidence and that the public interest will be served will the Commissioner undertake a prosecution, keeping in mind that the contemporary view favours resolving, in appropriate cases, contraventions through remedial rather than punitive measures.

4. *RESPONSIBILITY OF INVESTIGATORS*

Since the Commissioner has the discretion under the *Act* to proceed by way of prosecution,[5] injunction[6] or compliance agreement[7] Investigators should be mindful that the decision as to which option the Commissioner will take depends in a large part on the results of the investigation. It is therefore incumbent upon Investigators to conduct all investigations to the standards required to meet the burden of proof necessary for prosecution as detailed in previous chapters.[8]

5. *RESPONSIBILITY OF LEGAL COUNSEL*

Based on the investigation report and the assessment of investigative findings and evidence, Senior Counsel to the Commissioner determines if the evidence demonstrates that there is a *reasonable prospect of conviction*. This decision requires an evaluation of how strong the case is likely to be when presented at trial.

A proper assessment of the case and the evidence will take into account matters such as:

a) a determination that the conduct complained of falls squarely within the specific terms of the applicable provision of the *Acts,*

b) whether the offence is one that requires proving *mens rea*[9] and whether the evidence is sufficient to prove that the offence was committed with intent;

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[5] Refer to section 511 of the *Canada Elections Act.*

[6] Refer to section 516 of the *Canada Elections Act.*

[7] Refer to section 517 of the *Canada Elections Act.*

[8] Refer to Chapter 7 – *Official cautions,* Chapter 8 – *Access to records, books and documents,* Chapter 9 – *Collection, use and preservation of evidence, etc.*

[9] Offences in which a positive state of mind such as intent, knowledge or recklessness must be proved. Regulatory offences such as those of the *Acts* fall into this category only if words such as *"wilfully"*, *"knowingly"* or *"intentionally"* are contained in the statutory provision creating the offence.

c) the availability, competence, suitability and credibility of witnesses[10] and their likely impression on the Court, matters that would be commented on in the investigation report;[11]

d) the admissibility of the evidence;[12]

e) any defence open to the accused, provided by the accused.

The decision to prosecute must be reviewed until the time of trial, in the event new developments affecting the quality of the evidence and the public interest surface.

The factors, which may be properly taken into account in deciding whether the public interest requires prosecution, will vary from case to case, but must not include any consideration of the political implication of the decision.

6. PUBLIC INTEREST FACTORS

Public interest factors include:

a) the seriousness or triviality of the alleged offence;

b) the significant mitigating or aggravating circumstances;

c) the requirement to ensure fairness of the electoral process;

d) the suspect's alleged degree of responsibility for the offence;

e) the appropriateness of alternatives to prosecution (e.g. compliance agreements);

f) the likely effect on public order or public confidence in the integrity of the *Acts* by proceeding with a prosecution;

g) the need for general and specific deterrence;

h) the limits on available resources;

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[10] Refer to Chapter 7 – *Official cautions*, for the definition of "witness".

[11] Refer to Chapter 12 – *Investigation report format*, for more information on the other essential reporting requirements expected from Special Investigators.

[12] Refer to Chapter 9 – *Collection, use and preservation of evidence*, for the essential requirements to ensure the continuity of possession.

i) the time limit to prosecute has not expired;[13]

j) where a section of the *Acts* is found unconstitutional in a province, the appropriateness to apply the decision uniformly across the country.

7. DECISION TO PROSECUTE

The Commissioner is responsible for deciding the best course of action after having reviewed the assessment of investigation findings[14] and the recommendations from legal counsel. Where the Commissioner determines that the case meets the factors listed in above paragraph 3 and enforcement of the *Act* requires prosecution, consent[15] is provided in writing.

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[13] See section 514 of the *Canada Elections Act*. Bill C-24 received Royal Assent on June 19, 2003. It amended the limitation period from 18 months after the commission of the act constituting the offence, to within 18 months after the Commissioner became aware of the facts giving rise to the prosecution. However, this new period cannot be later than 7 years after the day on which the offence was committed. The 2003 amendments also provide for a Commissioner's certificate certifying the day on which the Commissioner became aware of the facts. This certificate is proof of that date in absence of any evidence to the contrary.

[14] See Chapter 14 – *Assessment of investigation findings*, for more information on this matter.

[15] Refer to Chapter 18 – *Consent of the Commissioner to prosecute*, for more information on the requirements.

Elections Canada

CHAPTER 18

CONSENT OF THE COMMISSIONER TO PROSECUTE

Commissioner of Canada Elections

January 2004

CONSENT OF THE COMMISSIONER TO PROSECUTE

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1. INTRODUCTION

This chapter provides general information, direction and guidance to Investigators with respect to their role, responsibilities and assistance in prosecution proceedings under the *Acts*.[1]

2. DUTIES AND RESPONSIBILITIES OF THE COMMISSIONER

Prosecution of offences under the *Acts* may only be instituted with the prior written consent of the Commissioner on whose behalf the prosecution will be conducted.[2] The Commissioner's written consent is also required where another person, or a police force, wishes to institute a prosecution for an offence under the *Acts*.

3. PREPARATION OF THE CONSENTS

Where the Commissioner consents to a prosecution, Senior Counsel to the Commissioner will prepare a *"Consent to prosecute"*[3] intended to the agent appointed by the Commissioner for the purpose of the prosecution and a *"Consent to institute prosecution"*[4] intended to the Investigator who will act as informant for the purpose of laying the information. In order to protect a right of appeal, the information must be laid by someone in the employ of the Commissioner.[5] When the Commissioner signs the consent documents, a copy of each signed document will be filed at the Commissioner's office.

4. PREPARATION AND REVIEW OF INFORMATION DRAFT

In summary conviction proceedings, Form 2[6] of the *Criminal Code*[7] is used. Senior Counsel to the Commissioner instructs the agent to prepare a draft of the information for Counsel's review and, when required, for review by the Chief Investigator.

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[1] For the purpose of this manual, "*Acts*" include the *Canada Elections Act* and the *Referendum Act*.

[2] See subsection 512(1) of the *Canada Elections Act*. Exception where consent is not required, see subsection 512(2) of the *Canada Elections Act*.

[3] See Appendix 1 for a sample of "*Consent to prosecute*" at the end of this chapter.

[4] See Appendix 2 for a sample of "*Consent to institute prosecution*" at the end of this chapter.

[5] See *R.* v. *Trimarchi*; *R.* v. *Robinson* cited in *R.* v. *Trimarchi* (1987), 63 O.R. (2nd).

[6] See Appendix 3 for a sample of *Form 2* at the end of this chapter.

[7] See sections 506 and 788 of the *Criminal Code*.

5. LAYING THE INFORMATION AND RESPONSIBILITY OF INVESTIGATORS

Investigators will be contacted by the agent of the Commissioner for arrangements to have the information sworn. Since the informant swears the information under oath, it is the ultimate responsibility of Investigators named in the "*Consent to institute prosecution*"[8] to verify and ascertain that the facts in the information are accurate. Each element of the offence will be set out in a separate count or offence, with the date and place of the offence, leaving no ambiguity on the specificity of the facts. Investigators must not rely on memory and need to thoroughly review the complaint file to provide the belief of reasonable grounds, especially if the informant has no previous personal knowledge of the file. Should any concerns arise, Investigators are to discuss the matter with the agent or Senior Counsel to the Commissioner.

5.1 Laying the information

Informants must sign their name before a "Justice"[9] and state their occupation as Investigators for the Commissioner of Canada Elections. Usually, the agent will accompany informants. Investigators should be prepared to answer questions from a "Justice" related to the facts contained in the information and the investigation.

6. AFTER THE CHARGES ARE LAID

Upon request from the agent, Investigators may be required to provide further assistance, including the review of the complaint file for the purposes of pre-trial disclosure[10] to defence counsel, the preparation of an evidence brief, the preparation of testimony of witnesses and court appearances.

Investigators may also be asked by the agent to carry out further investigations or inquiries that the agent believes are necessary to present the case fairly and effectively in court. Upon such request, the Chief Investigator should be contacted for further instructions and direction. Investigation reports should be submitted to the Chief Investigator with a copy to the agent.

Especially in cases that may attract considerable public attention, such as the investigation and prosecution of public figures, Investigators should contact the Chief Investigator or Senior Counsel to the Commissioner who shall advise the Commissioner. Investigators should act with fairness, moderation and dignity in the conduct of any investigations after charges have been laid.

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[8] See subsections 512(1) and (2) of the *Canada Elections Act*.

[9] See section 2 of the *Criminal Code* for the interpretation of the definition of a "Justice".

[10] Refer to Chapter 19 – *Pre-trial disclosure*, for more information on this matter.

6.1 Report requirements

When necessary, Investigators should seek instructions from Senior Counsel to the Commissioner or the Chief Investigator and submit timely reports concerning their involvement in proceedings and discussions with the agent.

7. SERVICE OF SUMMONS

Summons[11] must be served by a "peace officer".[12] The law enforcement agency in the judicial district where the information is laid normally provides the service, unless otherwise instructed by the agent.

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[11] See subsection 509(2) of the *Criminal Code.*

[12] See section 2 of the *Criminal Code* for the definition of "peace officer".

APPENDIX 1

Consent to prosecute

Name of prosecutor
Firm
Address

By virtue of subsection 512(1) of the *Canada Elections Act* (S.C., 2000, c. 9), I hereby give you my consent to prosecute (accused's name, state if candidate, official agent, auditor of what electoral district and when), for an offence (or offences) contrary to section(s) (state offence section, statute) and for any related offences.

This consent is given at Ottawa, this _____ day of _______________ 20____.

____
Commissioner of Canada Elections

APPENDIX 2

Consent to institute prosecution

Name of Investigator
Address

By virtue of subsection 512(1) of the *Canada Elections Act* (S.C., 2000, c. 9), I hereby give you my consent to institute a prosecution against (accused's name, state if candidate, official agent, auditor of what electoral district and when), for an offence (or offences) contrary to section(s) (state offence section, statute) and for any related offences.

This consent is given at Ottawa, Canada, this _____ day of _______________ 20____.

____
Commissioner of Canada Elections

APPENDIX 3

Form 2

INFORMATION
(Section 506 and 788 of the Criminal Code)

Canada,
Province of ………………………….,
(Territorial division).

This is the information of C.D., of ……………………………. *(profession)*, hereinafter called the informant.

The informant says that *(if the informant has no personal knowledge state that he believes on reasonable grounds and state the offence)*.

Sworn before me this ……………..…..day of
……………..……., A.D. ……………….., ……………………………………………..
at……………………………………….. *(Signature of Informant)*
…………………………………………….
A justice of the Peace in and for
…………………………………………….

Note: The date of birth of the accused may be mentioned on the information or indictment.

Elections Canada

CHAPTER 19

PRE-TRIAL DISCLOSURE

Commissioner of Canada Elections

January 2004

Chapter 19

PRE-TRIAL DISCLOSURE

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1. INTRODUCTION

This chapter provides general information on the duty for the prosecution to disclose all relevant information to an accused or counsel to the accused.

2. POLICY

In 1992, the Attorney General of Canada announced a uniform policy on pre-trial disclosure in criminal and regulatory cases. The policy applies to all federally prosecuted indictable and summary conviction offences.[1] The Commissioner of Canada Elections (the Commissioner) relies on this policy for pre-trial disclosure under the *Acts*.[2]

The policy is shaped by the decision of the Supreme Court of Canada in *Stinchcombe*,[3] and requires the lawyer retained by the Commissioner for the purpose of a prosecution (hereinafter referred to as agent) to disclose all relevant information to those being prosecuted for indictable offences.

The single most dramatic change in disclosure, post-*Stinchcombe*, is the need to disclose not just the prosecution's case, but also the unused portion of the prosecution and investigation file, which may assist the accused. According to rules, the agent must not only disclose the prosecution's case but must also comb through the rest of the case to see if there is anything that arguably could help the accused.

The responsibility for determining the relevance of material to disclose rests with the agent who, where appropriate, consults with Senior Counsel to the Commissioner.

Once charges have been laid,[4] and on request by the accused or counsel for the accused, the agent must disclose as soon as reasonably possible the evidence on which it intends to rely at trial. Further, any evidence that may assist the accused, whether it is intended to be adduced or not, must also be disclosed.

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[1] Attorney General's Crown Counsel Policy Manual (1993), Minister of Justice and Attorney General of Canada. A new edition of the manual was published by the Minister of Justice and Attorney General of Canada in 2000, with the new name *The Federal Prosecution Service Deskbook*.

[2] For the purpose of this manual, "*Acts*" include the *Canada Elections Act* and the *Referendum Act*.

[3] *R.* v. *Stinchcombe* (1991), 8 C.R. (4th) 277, 68 C.C.C. (3d) 1 (S.C.C.). In the criminal context, the Supreme Court of Canada concluded that there was a duty on the Crown to disclose all relevant information to an accused. The Court recognised the "overriding" concern that failure to disclose impedes the ability of the accused to make full answer and defence, which is one of the principles of fundamental justice.

[4] Refer to Chapter 18 – *Consent of the Commissioner to prosecute*, for more information on the responsibilities of Investigators for the laying of an information.

The agent has a continuing obligation to disclose whether a request for pre-trial disclosure has been received or not. In all cases, the agent must disclose any evidence tending to show that the accused may not have committed the offence.

The timing of disclosure should occur sooner rather than later. In most jurisdictions, a date for preliminary hearing will not be set until disclosure is complete. Disclosure is more likely to be delayed in complex conspiracy cases and in cases where it is not yet known whether a witness will be testifying.

If the accused is not represented by counsel, the agent shall arrange to have the accused informed that disclosure is available under this policy and shall determine how disclosure can best be provided. Because of the need to maintain an arms-length relationship with the accused, it will in most instances be preferable to give the accused disclosure in writing.[5]

3. EXCEPTIONS TO DISCLOSURE

Pre-trial disclosure is not required of reply evidence tendered by the agent in response to issues raised by the accused at trial, where their relevance only becomes apparent during the course of the trial itself.

Information will not be handed over to the defence if it is not in the public interest to do so. In exercising this discretion, the agent shall balance the principles of fair and full disclosure, with the need, in appropriate circumstances, to limit the extent of disclosure. On a case-by-case basis, the agent will not disclose information for public interest concerns, including the following reasons:

a) information tending to identify a confidential police informant;[6]

b) information tending to prejudice an ongoing police investigation;

c) information which reveals confidential police investigative techniques, e.g. electronic surveillance, the type of monitoring device, its characteristics;

d) information that may be considered a confidence of the Queen's Privy Council for Canada;[7]

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[5] The precise method by which an accused is informed of the availability of disclosure may vary from region to region. In some instances, the summons or appearance notice may provide this information. In others, counsel for the prosecution may wish to provide the accused with a written or oral notification in court. In some regions, the judge presiding over first appearance may tell the accused that disclosure is available from the prosecution.

[6] Unless the information was provided by a confidential police informant during the course of a police investigation, a witness who co-operated to an investigation under the *Acts* with Investigators is not covered under the exception of the non disclosure policy.

[7] See section 39 of the *Canada Evidence Act*.

e) information that may not be lawfully disclosed or that would be injurious to international relations, national defence or security if disclosed.[8]

4. WHAT WILL BE DISCLOSED

In most cases, the agent will consider disclosing at least the following information to the defence:

a) particulars of the circumstances surrounding the offence;

b) copies of all relevant written statements[9] concerning the offence made by a person; where that person has not provided a written statement, copy or transcription of the notes[10] taken by the Investigators when interviewing the witness;[11] if there is none, a summary of the witness' anticipated evidence; even if there is a written statement, the defence is still entitled to the Investigators' notes;

c) appropriate opportunity to examine any electronically recorded statements[12] of a witness[13] to a "person in authority";[14]

d) copy of all written or recorded statements concerning the offence made by the accused to a person in authority; if the statement is verbal, a verbatim account should be given where available, including any notes of the statement taken by Investigators during the interview; if a verbatim account is unavailable, an account or description of the statements should be given (whether the statement in whatever form is intended to be adduced or not);

e) where applicable particulars of the accused's criminal record;

f) copies of all witness'[15] reports relating to the offence, except to the extent that they may contain privileged information;

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[8] *Supra*, footnote 5; also see section 38 of the *Canada Evidence Act*.

[9] Refer to Chapter 11 – *Interview techniques*, for more information on the essential requirements of note taking and witness statements.

[10] *Supra*, footnote 9.

[11] Refer to Chapter 7 – *Official cautions*, for definition of "witness".

[12] *Supra*, footnote 9.

[13] *Supra*, footnote 11.

[14] "*A person in authority*" is anyone who can affect the proceedings against an accused. Investigators investigating an alleged offence under the *Acts* shall be considered a *person in authority* because the prosecution must demonstrate that the information or evidence given to a person in authority was given voluntarily.

[15] *Supra*, footnote 11.

g) copies of all documents[16] and photographs that the agent intends to introduce as evidence during the case-in-chief for the prosecution and an appropriate opportunity to inspect any case exhibits;[17]

h) copy of any search warrant[18] relied on by the Commissioner and if any seized material will be tendered, copy of the judicial authorisation under which the material was seized;

i) copy of the information[19] or indictment;

j) particulars of similar fact or evidence on which the agent intends to rely at trial;

k) particulars of any procedures used outside of court to identify the accused;

l) particulars of any other evidence on which the agent intends to rely at trial and any information known to the agent which the defence may use to impeach the credibility of a prosecution witness in respect of the facts in issue in the case.

The above guidelines require the disclosure of information concerning any written or unwritten agreements between the agent and a witness.[20]

5. PROTECTING WITNESSES AGAINST INTERFERENCE

The Supreme Court of Canada has discussed the right of an individual to be left alone and the appropriateness of preventing the unnecessary invasion of witness privacy.[21]

If the defence seeks information concerning the identity or location of a witness, the agent retained by the Commissioner will address the following four (4) considerations:

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[16] Refer to Chapter 8 – *Access to records, books and documents*, for the definition and description of *"election documents"* and *"other documents"* relating to an election campaign which may be accessed for the purpose of an investigation.

[17] Refer to Chapter 9 – *Collection, use and preservation of evidence*, for more information on the policy and procedures for handling evidence and court exhibits. The term "case exhibits" refers to items seized or acquired by Investigators during the investigation which are relevant to the charges against the accused, whether the agent intends to introduce them or not. **Note**: in cases where there are a large number of documents and files, on which the agent does not intend to rely, the agent may exercise some discretion and refuse to disclose some material. If appropriate, the agent should ask the defence to define as precisely as possible the type or class of document, tapes or other exhibits sought for examination. Access to existing indexes or logs may help the defence narrow its request to items relevant to the accused's defence. In cases involving thousands of seized documents, the accused's defence is entitled to copies on payment at the rate per page determined by the Chief Electoral Officer.

[18] *Supra*, footnote 16.

[19] *Supra*, footnote 4.

[20] *Supra*, footnote 11.

[21] *R.* v. *Duarte* (1990), 53 C.C.C. (3d) 1 to 11 and 15; *R.* v. *Stinchcombe* (1991), 68 C.C.C. (3d) 1 at 8-9; *R.* v. *Mills* (1999), 3 S.C.R. 668; *R.* v. *O'Connor* (1995), 4 S.C.R. 411.

a) the right of an accused to a fair trial;

b) the principle that name of witnesses are to be communicated;

c) the right of a witness to privacy and to be undisturbed until required by subpoena to testify in court;

d) the need for the criminal justice system to prevent intimidation or harassment of witnesses, danger to their lives or safety, or other interference with the administration of justice.

Where a witness does not wish to be interviewed by or on behalf of an accused, or where there is a reasonable basis to believe that the fourth consideration referred to in paragraph d) above (interference with witnesses, etc.) may arise on the facts of the case, the Commissioner's agent, following consultation with Senior Counsel to the Commissioner, may decide to reserve information concerning the identity or location of the witness, unless a court of competent jurisdiction orders its disclosure.

Where limits on disclosure are being considered on the basis of interference with a witness, and wherever reasonably practicable, the agent of the Commissioner should request a written threat assessment from Investigators who shall seek advice from the Chief Investigator.

Elections Canada

CHAPTER 20

RELATIONS WITH THE MEDIA

Commissioner of Canada Elections

January 2004

RELATIONS WITH THE MEDIA

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1. INTRODUCTION

This chapter provides general information, direction and guidance to Investigators, Media Relations Officer and Senior Counsel to the Commissioner who are asked to respond to media questions about cases under investigation, compliance agreements being negotiated,[1] injunction applications[2] or prosecutions[3] instituted before the courts.

It is the responsibility of Media Relations Officer, Communications Directorate at Elections Canada, to respond to inquiries and to communicate with the media. Investigators who receive media questions should refer these people to the Media Relations Officer at telephone number (613) 991-3883 or 1 (800) 267-7360.

Investigators and the staff at the Office of the Commissioner in Ottawa may be contacted by the media concerning activities related to the election enforcement program; the present policy does not preclude providing background documentation on the investigative process published by Elections Canada.[4]

2. POLICY

2.1 Cases before the courts

In principle, no public discussion of the merits of a prosecution or an application for an injunction[5] should occur, except in open court and on the record. Cases before the courts are subject to the *sub judice* rule. Therefore, when questioned on a case still before the courts, the standard answer should be as follows: "***The case is still pending before the courts and it is normal policy not to comment on such matters.***" Where the court case is ended, it would be proper to state, as a matter of court record, the conclusions of the case, without further comment.

That rule has two purposes: first, to protect the courts, which must receive and dispose of cases impartially and free from the influence or effect of public utterances and comment; second, to protect the parties before the courts who cannot defend themselves against public comments, but who are protected in the courts by the rules of evidence and procedure.

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[1] See section 517 of the *Canada Elections Act*.

[2] See section 516 of the *Canada Elections Act*.

[3] See section 511 of the *Canada Elections Act*.

[4] See *Background-Documentation* in Appendix 1, at the end of Chapter 23 – *Relations with the public*.

[5] *Supra*, footnote 2.

2.2 Other cases

Before charges are laid, the media may seek to confirm that the Commissioner of Canada Elections (the Commissioner) is conducting an investigation on a specific candidate, political party, third party or individual, that a compliance agreement is under negotiation, that a court injunction is under consideration or that charges are expected to be laid. It is a long standing practice of the Commissioner to decline to confirm or deny such allegations, including comments on the identity of a complainant who may have informed the public about the complaint to the Commissioner.

That rule serves several purposes:

a) to comply with the principle of the presumption of innocence and the need to protect the reputation of individuals;

b) to ensure compliance with the provisions of the *Privacy Act* governing the disclosure of personal information;[6]

c) to maintain political neutrality so as not to affect the election results;

d) to ensure that investigations will not be jeopardised by the possible destruction of evidence that would affect the effectiveness of the election compliance and enforcement program and the public confidence in the administration of justice;

e) to avoid premature publicity before the completion of negotiations between the contracting parties which could jeopardise the conclusion of the compliance agreements.

To deny the existence of a complaint or of an investigation at one time and to decline to comment later are as revealing as an affirmation. The only proper response for everyone concerned is to advise that, **as a matter of policy, the Commissioner does not deny nor confirm the existence of a complaint and of an investigation**. Even when the matter is already in the public domain, the Commissioner does not discuss such matters publicly.

3. MEDIA RELATIONS AND COURT PROCEEDINGS

Once an application for an injunction is filed, a compliance agreement is concluded or an information is laid, Senior Counsel to the Commissioner provides the Media Relations Officer with a statement of facts. The Media Relations Officer may answer media inquiries about the following, subject to legal prohibitions or a court ordered ban on publication. This information should be obtained from Senior Counsel to the Commissioner.

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[6] See sections 7 to 9 of the *Privacy Act* concerning the conditions under which personal information may be disclosed to a person other than to whom the information relates.

3.1 Information that may be disclosed

The following information may be disclosed:

a) the accused's name and the electoral district in which the offence has been committed;

b) the substance or the gist of the charge;

c) the current standing of the case;

d) the contracting party's name, the act or omission in question and a summary of the compliance agreement.[7]

3.2 Information that may not be disclosed

The Media Relations Officer, Investigators and Senior Counsel to the Commissioner should not make any statement nor comment that is likely to prejudice a fair trial or create the appearance of bias. This includes observations about the guilt or the innocence of an accused and the following points listed below:

a) the evidence that has been or is expected to be presented;

b) the character or reputation of any accused person, including any criminal record;

c) the failure of an accused person to testify or cooperate with the Commissioner's investigation;

d) the existence of any plea negotiations or the possibility of a plea of guilty or other disposition, whether or not to a lesser or similar charge;

e) the correctness of the judge's ruling on the case;

f) the character, reputation or credibility of any witness;

g) the merit, strength or weakness of the prosecution or defence case.

In addition, the Media Relations Officer, Investigators and counsel should not, before a finding of guilt or an acquittal, make any statement or comment on the following matters:

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[7] See section 521 of the *Canada Elections Act*.

- the outcome of charges against other persons arising out of the commission of the same offence;
- the Commissioner's position on the sentence;
- the prosecution's address to the court, before or after delivery.

4. RESPONSIBILITIES OF A MEDIA RELATIONS OFFICER

Investigators should be aware of the responsibilities of the Media Relation Officers, even though they are not themselves designated as spokesperson for the Commissioner. When acting as a spokesperson for the Commissioner, the Media Relations Officer should:

a) provide factual information to the media, as described in the preceding section 3; questions relating to advice or recommendations tendered to the Commissioner, speculation on policy decisions, questions on current or future cases, or information on privileged or personal information must not be answered nor commented upon; however, they should be referred to Senior Counsel to the Commissioner for general information purposes;

b) refer to Senior Counsel to the Commissioner matters relating to substantive criminal law procedure, the laws[8] within the jurisdiction of the Commissioner, the operation of the investigative process and the responsibilities of the Commissioner;

c) not discuss decisions, deliberations or policies of other law enforcement agencies, such as the Royal Canadian Mounted Police (RCMP), involved in the investigation of a complaint under the *Acts*.[9] Questions about these issues should be referred to the agency concerned.

Media Relations Officer should also brief the Commissioner and Senior Counsel to the Commissioner on all enquiries. The Media Relations Officer should remember that, at any stage, an investigation or court proceedings could receive media comment or create public controversy, and thus require the Chief Electoral Officer to respond. If this happens, the Media Relations Officer shall immediately provide a briefing note to the Commissioner and the Chief Electoral Officer. The briefing note shall outline the facts, action taken to date and focus of media interest.

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[8] This includes the *Canada Elections Act* and the *Referendum Act*.

[9] *Supra*, footnote 8.

5. RESPONSIBILITIES OF INVESTIGATORS

Investigators should remember that all unsolicited contacts and interviews with the media should be considered "*on the record*" (that is intended for publication). Investigators should make an accurate record of media questions and advise that they will be referred to the Media Relations Officer for consideration and response. As soon as possible, Investigators should report the matter to Senior Counsel to the Commissioner and the Chief Investigator who will advise the Communications Directorate in Ottawa.

Elections Canada

CHAPTER 21

RELATIONS WITH LAW ENFORCEMENT AGENCIES

Commissioner of Canada Elections

January 2004

Chapter 21

RELATIONS WITH LAW ENFORCEMENT AGENCIES

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1. INTRODUCTION

This chapter provides general information and guidance to Investigators when communicating with law enforcement agencies.

2. POLICY

Cooperation and effective consultation between law enforcement agencies and Investigators are essential to the proper administration of the *Acts.*[1]

During the course of an investigation for an offence under the *Acts*, Investigators may contact representatives of appropriate law enforcement agencies for the gathering of evidence and to locate witnesses or suspects[2].

When contacting a law enforcement agency, Investigators will provide general information on the role and responsibilities of the Commissioner of Canada Elections (the Commissioner) and explain the reasons for Investigators to act as informant[3] for the purpose of laying charges for offences under the *Acts*. Investigators will provide, on request, proof of their identity[4] and explain the limits of their statutory authority and powers, including the fact that they are not empowered to investigate *Criminal Code* offences.

3. INVESTIGATIVE APPROACHES INVOLVING THE POLICE

The following are examples of reasons to contact a law enforcement agency:[5]

a) to obtain information and evidence related to an investigation of a complaint under the *Acts* that was initiated by the police;[6] this includes the occurrence report of an event related to an electoral matter;

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[1] For the purpose of this manual, "*Acts*" include the *Canada Elections Act* and the *Referendum Act*.

[2] Refer to Chapter 7 – *Official cautions*, for the definitions of "witness" and "suspect".

[3] See Ontario Court of Appeal in *R.* v. *Trimarchi* (1987). To have standing to appeal, the information must be laid by someone from the Office of the Commissioner as opposed to being laid by a police officer.

[4] Refer to Chapter 2 – *Qualifications, duties and responsibilities of Investigators*, for more information on this matter.

[5] Refer to Chapter 5 – *Direction and control of investigation*, for more information on the work assignment instructions and the role of the Chief Investigator.

[6] For instance, an alleged offence under section 325 and paragraph 495(2)(*b*) of the *Canada Elections Act*, unlawful removal or damage to a candidate's advertisement.

b) to obtain the assistance of a "peace officer"[7] during the execution of a search warrant;[8]

c) to verify the criminal record of an individual when reasonable grounds exist to suspect that other criminal activity[9] may also be a factor or consideration in alleged infractions under the *Acts*;

d) to provide assistance to the police agencies of jurisdiction in complaints referred to their attention by the Commissioner;

e) follow-up action which may be necessary as a result of a proceeding initiated for the maintenance of peace and good order during the hours that the polls are open.[10]

4. REPORT REQUIREMENTS

As a rule, law enforcement agencies readily provide assistance with requests made by the Office of the Commissioner. In their report, Investigators should provide the identity, rank and address of the police officer contacted together with an assessment of the degree of cooperation received.[11] Any concern should be promptly reported to the Office of the Commissioner.

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[7] See section 2 of the *Criminal Code* for the definition of "peace officer".

[8] Refer to Chapter 8 – Access to records, books and documents, for the responsibilities of Investigators in laying an information to obtain a search and seizure warrant.

[9] Refer to Chapter 14 – *Assessment of investigation findings*, for more information on the criteria for recommending the continuation of an investigation so as to avoid jeopardising the collection, use and admissibility of information and evidence in any *Criminal Code* investigation and proceedings.

[10] See section 479 of the *Canada Elections Act* for more information on the powers of returning officers, deputy returning officers, supervisors and persons responsible for maintaining order who may require the assistance of constables for maintaining peace and order during polling day.

[11] Refer to Chapter 12 – *Investigation report format*, for more information on the other essential requirements.

Elections Canada

CHAPTER 22

RELATIONS WITH ELECTION OFFICERS

Commissioner of Canada Elections

January 2004

Chapter 22

RELATIONS WITH ELECTION OFFICERS

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1. INTRODUCTION

This chapter provides general information, direction and guidance to Investigators in their interaction with election officers[1] for the purpose of an investigation under the *Acts*.[2]

2. POLICY

Maintaining effective communications with election officers is essential to the investigative process. In their dealings with election officers, Investigators shall act with courtesy and discretion. The manner in which Investigators communicate with election officers may influence their perception of the program of election enforcement and compliance.

During the course of an investigation it may be necessary to contact an election officer. In the majority of cases, the requirement to contact an election officer in the electoral district in which the investigation is taking place will be identified and authorised by the Chief Investigator. As a courtesy, either the Senior Counsel to the Commissioner or the Chief Investigator will contact the Returning Officer, if possible, prior to the investigation and request their assistance and discretion. The fact that an individual is an election officer does not give them privileged access to any information concerning the investigation or complainant other than what has been directed in the work assignment letter.[3]

The policy of the Commissioner's Office to neither confirm nor deny the existence of an investigation or the identity of the complainant and not to discuss a matter already in the public domain also applies to election officers if they are not directly involved in an investigation.[4] The Returning Officer may be advised of an investigation in their electoral district on a need to know basis, if deemed necessary, by Senior Counsel to the Commissioner or the Chief Investigator.

When soliciting the cooperation of an election officer, Investigators will provide an explanation for the investigation and reason[5] for the interview, some of which can be found in section 5 below. Election officers should also be told what is expected of them. Should an election officer wish to contact a member of Elections Canada in Ottawa, Investigators will provide them with the opportunity to do so. Investigators will inform the Commissioner's Office.

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[1] See section 2 and subsection 22(1) of the *Canada Elections Act*, for the definition of "Election officers". It includes Returning Officers (R.O.), Deputy Returning Officers (D.R.O.), Assistant Returning Officers (A.R.O.), revising officers, revising agents, poll clerks, etc. For greater certainty, subsection 22(2) specifies that a representative of the candidate who is present at a polling station is not an election officer.

[2] For the purpose of this manual, "*Acts*" include the *Canada Elections Act* and the *Referendum Act*.

[3] Refer to Chapter 5 – *Direction and control of investigation*, for more information on this matter.

[4] Refer to Chapter 20, *Relations with the media*, for more information on the rationale for not disclosing information.

[5] Refer to Chapter 11 – Interview *techniques*, *Protocol script for interviews*, for more information on the other essential points to communicate to an interviewee.

3. *POLITICAL IMPARTIALITY OF ELECTION OFFICERS*

The Chief Electoral Officer (the CEO) exercises general direction and supervision[6] over the administrative conduct of elections and enforces on all election officers fairness, impartiality and compliance with the provisions of the *Acts*.

Election officers, including Returning Officers, are not appointed by the CEO and are not included in the definition of staff of the Chief Electoral Officer. Their duties are specifically outlined in the *Acts*.[7]

4. *COMPLAINTS INVOLVING ELECTION OFFICERS*

Complaints received by Investigators alleging that an election officer may have committed an offence under the *Acts* or complaints relating to alleged administrative irregularities committed by an election officer,[8] must be reported to the Commissioner, who will refer the complaint to the Chief Electoral Officer. Where the CEO believes on reasonable grounds that an election officer may have committed an offence, he must direct the Commissioner[9] to make such inquiries as appear to be called for in the circumstances. The decision to prosecute is at the sole discretion of the Commissioner of Canada Elections (the Commissioner).

5. *INVESTIGATIVE APPROACHES INVOLVING ELECTION OFFICERS*

Election officers may be contacted for the following purposes:

a) to obtain assistance in locating the whereabouts of a person who is not an election officer when the required information is not available from other sources;[10]

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[6] See paragraph 16(*a*) of the *Canada Elections Act*.

[7] For example, see sections 24, 26, 32 to 35 of the *Canada Elections Act*. Returning Officers are appointed by the Governor in Council; assistant returning officers are appointed by the Returning Officer; revising agents, deputy returning officers and poll clerks are selected from lists supplied by the registered party whose candidate finished first or second in the last election. Election officers are paid out of the unappropriated moneys of the Consolidated Revenue Fund.

[8] Refer to Chapter 3 – *Preliminary assessment of alleged infractions*, for more information on the criteria and general principles for recommending further action to the Commissioner on complaints involving election officers.

[9] See section 510 of the *Canada Elections Act*.

[10] Refer to Chapter 21 – *Relations with law enforcement agencies*, for more information on other avenues of investigation, which may be considered instead.

b) to interview an election officer who initiated a written complaint[11] or referred to in a complaint to the Commissioner by another person;

c) for any follow-up action which may be necessary as a result of a proceeding undertaken for the maintenance of peace and good order at an election during the hours that the polls are open;[12]

d) to interview an election officer considered as a "witness"[13] in an investigation proceeding;

e) to interview an election officer suspected[14] of an offence[15] or to obtain from an election officer access to documentary evidence.[16]

Investigators will be provided a list of *Returning Officers* for the electoral districts within their region and directives and instructions issued by the Chief Electoral Officer to election officers for the performance of their respective duties.

6. REPORT REQUIREMENTS

As a rule, election officers readily provide assistance in investigations initiated by the Commissioner's Office. Investigators should report the name and address of the election officer contacted together with an assessment[17] of the degree of cooperation received. Any concerns should be reported to the Commissioner who may advise the CEO.

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[11] Refer to Chapter 11 – *Interview techniques*, for more information on the factors to consider for the interview of a complainant.

[12] See section 479 of the *Canada Elections Act* for more information on the powers of Returning Officers, deputy and supervisors to maintain peace and good order during polling day.

[13] Refer to Chapter 7 – *Official cautions*, for the definition of "witness".

[14] Refer to Chapter 7 – *Official cautions*, for the definition of "suspect" and the considerations that apply to proceedings for *Charter* protected rights.

[15] Refer to Appendix 1 in Chapter 4 – *Investigation policy*, for the *Index of offences*.

[16] Refer to Appendix 1, Chapter 8 – *Access to records, books and documents*.

[17] Refer to Chapter 12 – *Investigation report format*, for more information on the requirements related to the assessment of sources of information.

Elections Canada

CHAPTER 23

RELATIONS WITH THE PUBLIC

Commissioner of Canada Elections

January 2004

Chapter 23

RELATIONS WITH THE PUBLIC

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1. INTRODUCTION

This chapter provides general information, direction and guidance to Investigators in their interaction with the public.

2. POLICY

Maintaining effective communications is essential to the public's understanding of the role and responsibilities of the Commissioner of Canada Elections (the Commissioner). The manner in which Investigators communicate with the public impacts on the public's view of the Commissioner's enforcement and compliance program. More importantly, effective communications influence the public's perception of the integrity of the electoral process.

In their dealings with the public, Investigators should be polite, courteous, discreet and act with fairness, moderation and political impartiality. They should dress appropriately for the circumstances and carry identification.[1]

As consultants under contract,[2] Investigators can only undertake an investigation on direct instructions issued by the Office of the Commissioner. Investigators are accountable directly to the Commissioner.

Investigators must not represent themselves as police officers. Investigators must abstain from wearing or displaying any label, pin or material related to any police force or investigative agency.

While carrying out their duties, they should refrain from smoking in a private dwelling or in any local retained for the purpose of an interview.

Where there is interest from the public for details on the investigative process, Investigators will provide general information about the role and responsibilities of the Commissioner and the investigative process as found, for example, in the Background–Documentation.[3] They will neither confirm nor deny that an investigation is taking place nor reveal any privileged or personal information relating to an investigation.[4]

To maintain the confidence of the public in the neutrality of the Office of the Commissioner, Investigators must not engage in politically partisan activities at the federal or provincial level.

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[1] Refer to Chapter 2 – *Qualifications, duties and responsibilities of Investigators*, for more information on the features of the identification card.

[2] *Supra*, footnote 1, for the responsibilities of Investigators.

[3] See Appendix 1 for the *Background–Documentation* entitled *Enforcing the Canada Elections Act*, at the end of this chapter.

[4] See the *Privacy Act*, R.S. 1985, c. P-21 for the criteria which permit the disclosure of personal information.

Investigators must not work for or on behalf of any federal or provincial political party, candidate for federal or provincial office, any person, body, agency or institution with partisan political purposes or objectives, any federal or provincial referendum committee, and must not actively or publicly support or oppose the election of any federal or provincial political party or candidate, nor actively or publicly support or oppose any option in a federal or provincial referendum.

3. BILINGUAL SERVICES

The Commissioner recognises the right of every Canadian to use the official language of their choice in dealing with the Office of the Commissioner. Where needed, arrangements will be made by the Chief Investigator or Senior Counsel to the Commissioner to provide second language assistance to Investigators, and including languages other than English or French.

4. NON-DISCLOSURE PROVISIONS

Some investigations may attract the public's attention or cause concern in the political party under investigation. Should anyone, including a party official, candidate or representative of a candidate, contact Investigators to obtain information on an ongoing investigation, they should be advised that it is the policy of the Office of the Commissioner not to discuss such matters publicly.[5] Investigators may direct the inquiries to the Commissioner's Office.

5. UNSOLICITED ASSISTANCE FROM THE PUBLIC

When a person contacts a Investigator and requests an interview or offers assistance in an investigation, the following details should be obtained and reported to the Commissioner's Office prior to conducting the interview:

a) assess if the person is lodging a complaint; in that case, refer the person to the Commissioner's Office;

b) determine the reasons or motives for offering their cooperation;

c) take the name, political party affiliation or membership, possible relationship with either the suspect[6] or any other witnesses,[7] and the role or involvement with the alleged offence.

---

[5] Refer to Chapter 20 – *Relations with the media*, for the rationale in the non-disclosure of information to the public.

[6] Refer to Chapter 7 – *Official cautions*, for the definition of "suspect".

[7] *Supra*, footnote 6, for the definition of "witness".

The Commissioner may authorise further action.

6. ORAL COMPLAINTS FROM THE PUBLIC

A person who wishes to lodge a complaint[8] with an Investigator must be informed that allegations of wrongdoing should be submitted to the Commissioner in writing. Investigators will provide the address, telephone and fax numbers of the Commissioner's Office:

Commissioner of Canada Elections
257 Slater Street
Ottawa, Ontario K1A 0M6

Telephone: 1-800-267-7360
or (613) 998-4051
Fax: (613) 990-4877
or 1- 800-663-4908

When a person simply wants to give an oral "tip", the person should be advised that the complaint should be in writing; where the person is unwilling to do so, the Investigator should record the information and request the person to sign the declaration. The Investigator will forward the complaint to the Commissioner's Office without delay. Where the person refuses to sign the declaration, the information is nevertheless to be brought to the attention of the Commissioner's Office.

7. COMPLAINTS AGAINST INVESTIGATORS

Anyone wishing to complain about the conduct of an interview, the investigation proceedings or the behaviour of an Investigator should be advised to provide the facts in writing to the Commissioner who will review the matter. Investigators should also report available details concerning the incident in separate correspondence to the Commissioner's Office.

---

[8] This includes complaints under the *Canada Elections Act* and the *Referendum Act*.

During an election period, if there is evidence leading the Commissioner to believe that a serious breach of the Act may compromise the fairness of the electoral process, the Commissioner may, taking into consideration the public interest, apply to a court for an injunction ordering the person in question to comply with the law. The Commissioner may also conclude a compliance agreement with anyone the Commissioner has reasonable grounds to believe has committed, is about to commit or is likely to commit an offence. This is a voluntary agreement between the Commissioner and the person, in which the person agrees to terms and conditions necessary to ensure compliance with the Act. The Commissioner makes a summary of the compliance agreement public.

When prosecution is authorized

If the Commissioner believes on reasonable grounds that an offence under the Act has been committed, and that the public interest justifies it, the Commissioner may institute a prosecution or cause one to be instituted.

The Commissioner must consent to prosecutions under the Act. The Commissioner consents to a prosecution only when satisfied that the evidence demonstrates a reasonable prospect of conviction, and that the public interest requires the prosecution. Once the Commissioner authorizes a prosecution, charges are filed in a court of competent jurisdiction.

A prosecution for an offence must be instituted within 18 months after the day on which the Commissioner became aware of the facts giving rise to the prosecution, and not later than seven years after the day on which the offence was committed.

Types of offences

Sections 480 to 499 of the Act list the offence provisions, categorized according to whether intent is required, and the burden of proof required to prosecute them. Offences include:

- illegally attempting to influence the vote of an elector or the results of an election
- violating the rights of electors or of candidates
- illegally hampering or delaying the electoral process
- contravening the limits and obligations set out for contributions and expenses, including circumventing, attempting to circumvent or colluding in circumventing the rules for ineligible contributors, for concealing a contributor's identity and for contribution limits
- contravening the limits and obligations set out for third-party election advertising
- publishing the results of an election opinion poll during the blackout period or without the accompanying information required by the Act
- election advertising during the blackout period
- prematurely publishing election results

- partisan action by an election officer
- failure of an election officer to be diligent in the execution of his or her duties, and
- using personal information from a voters list or from the National Register of Electors for unauthorized purposes.

Penalties

When the Commissioner authorizes the laying of a charge, a decision is made whether to proceed by way of summary conviction or indictment. These are different criminal processes that relate for the most part to the procedure to be followed before the courts. The choice depends on the seriousness of the offence and will affect the nature of the penalty in the event of a conviction.

If a judge finds a person guilty of an offence, the person may receive a fine or a period of imprisonment, or both. The court may also impose additional penalties, such as:

- performing community service
- performing the obligation that gave rise to the offence
- compensating for damages, or any other reasonable measure the court considers appropriate, and
- a fine of up to five times the election advertising expenses limit exceeded by a third party.

The Act stipulates that certain offences are illegal practices (such as taking a false oath) or corrupt practices (such as offering a bribe). In addition to any other penalty that may be imposed, a person found guilty of one of these offences loses the right to be a candidate in a federal election, to sit as a member in the House of Commons, and to hold any office to which the incumbent is appointed by the Crown or by Governor in Council – for five years in the case of an illegal act, and for seven years in the case of corrupt practices.

For more information: Elections Canada
257 Slater Street
Ottawa, Ontario
K1A 0M6

Telephone
1 800 463-6868
toll-free in Canada and the United States

001 800 514-6868
toll-free in Mexico

(613) 993-2975
from anywhere in the world

For people who are deaf or hard of hearing:
TTY 1 800 361-8935
toll-free in Canada and the United States

Fax
(613) 954-8584
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Web site www.elections.ca

This publication is available in alternative formats.

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Elections Canada

CHAPTER 24

CIVIL LITIGATION / WITNESS ASSISTANCE

Commissioner of Canada Elections

January 2004

Chapter 24

CIVIL LITIGATION / WITNESS ASSISTANCE

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Appendix 1

Background–Documentation

ENFORCING THE *CANADA ELECTIONS ACT*

The Commissioner of Canada Elections

The Commissioner of Canada Elections is the independent officer whose duty is to ensure that the *Canada Elections Act* is complied with and enforced. The Chief Electoral Officer of Canada appoints the Commissioner under section 509 of the Act.

The current Commissioner, Raymond A. Landry, C.M., was appointed in April 1992.

History

The *Election Expenses Act* of 1974, a series of amendments to the *Canada Elections Act*, created the position of Commissioner of Election Expenses, whose responsibilities were restricted to ensuring that the election expenses provisions of the Act were complied with and enforced. In 1977, the Commissioner's responsibilities were extended to cover all provisions of the *Canada Elections Act*.

Role of the Commissioner

Generally speaking, the compliance aspect of the Commissioner's role involves taking corrective action immediately when the law is infringed. One aspect, for example, is ensuring that registered political parties, electoral district associations, leadership contestants, nomination contestants, candidates, and all their agents fulfill their obligations under the Act. These obligations include submitting financial returns and other documents by the deadlines specified in the Act.

Anyone with a complaint or allegation of wrongdoing should refer it to the Commissioner. A review is made of each one to determine whether there is a basis for the allegation. When satisfied that there is substance to the complaint, the Commissioner may order an investigation. If the Chief Electoral Officer has reasonable grounds to believe that an election officer may have committed an offence, the Chief Electoral Officer directs the Commissioner to make the inquiries that appear to be called for in the circumstances. The Commissioner retains the services of resource persons at the Ottawa office and across the country to deal promptly with situations giving rise to a possible offence.

EC 90560

1. *INTRODUCTION*

This chapter provides general information, direction and guidance to Investigators who are ordered to appear in a civil litigation as a party required to give material evidence or who received a request for access to personal information.[1]

2. *COLLECTION OF PERSONAL INFORMATION*

Investigators, in the course of their investigation into alleged offences under the *Acts*,[2] collect personal information. This information is retained in the personal information bank under the control of the Commissioner of Canada Elections (the Commissioner) and can only be accessed and disclosed according to the requirements set out in the *Privacy Act*.[3]

3. *POLICY*

Information obtained pursuant to an investigation of an alleged offence under the *Acts* is privileged; Investigators, as consultants under contract with the Commissioner, should not produce any documents nor answer any questions in any proceedings not concerning the enforcement of the *Acts*, without prior consultation with the Commissioner or Senior Counsel to the Commissioner.[4]

4. *SUBPOENA*

A witness[5] receiving a subpoena is compelled to attend court as required therein and to remain in attendance until the proceedings are completed, or until excused by the presiding judge.

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[1] Refer to *Chapter 8 – Access to records, books and documents*, for the definition of "personal information".

[2] For the purpose of this Manual, "*Acts*" include the *Canada Elections Act* and the *Referendum Act*.

[3] The Office of the Chief Electoral Officer is listed in the schedule "Other Government Institutions" in the *Privacy Act*.

[4] Generally, the contents of an investigation should not be produced or otherwise made available, save and except, during the course of a judicial proceeding, in which the rules of procedure and the law of evidence protect the interest of any individual involved in the matter. Where public discharge of the information could be prejudicial to an individual, it may be necessary to ask the court to recognise these concerns and reconsider whether it wishes to maintain the request for information.

[5] Refer to Chapter 7 – *Official cautions*, for a definition of a "witness".

In carrying out investigations on the commission of an alleged offence, Investigators collect information. In the context of a parallel civil litigation involving the same facts, a party may attempt to obtain production of documents safeguarded by Investigators by issuing a *subpoena duces tecum*. Should an Investigator be served with such a subpoena, the Chief Investigator or Senior Counsel to the Commissioner should be contacted without delay for instructions. Indeed, despite the general rule that a witness is compelled to attend with the requested documents, privacy legislation may require that a request for access to information be made by counsel for the party before the documents can be legally disclosed.[6]

In light of the above, Investigators that are subpoenaed must inform the Commissioner's Office immediately.

Investigators cannot, without lawful excuse, fail to give oral evidence as a witness in a judicial proceeding. Investigators called as a witness in a civil litigation will be expected to answer questions to the best of their knowledge, recollection and ability.

5. REQUEST

Requests for access to personal information collected during the course of an investigation should be made in writing to Elections Canada, Privacy Coordinator. The request should specify the purpose and describe the information to be disclosed to render the information reasonably retrievable by the Commissioner's Office.

6. DISCLOSURE

Generally, personal information under the control of a government institution cannot be disclosed without the consent of the individuals to whom it relates. However, the government institution has discretion to disclose the information under certain circumstances.[7]

7. LEGAL ASSISTANCE TO WITNESS

When the Commissioner is satisfied that the circumstances warrant it, Investigators will be provided legal assistance.[8]

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[6] For instance, rules governing the disclosure of medical records have been held to apply even where records were sought for use in criminal proceedings. *R.* v. *French* (1977), 37 C.C.C. (2d) 201 at 213-214 (Ont. C.A.), aff'd (1980) 1 S.C.R. 158.

[7] For more information on discretionary disclosure, see section 8 of the *Privacy Act*, R.S. 1985, c. P-21, Appendix 9 of Chapter 8.

[8] Refer to Chapter 2 – *Qualifications, duties and responsibilities of Investigators*, for more information on the justification and protection of Investigators involved in the administration and enforcement of the *Acts*.

Elections Canada

CHAPTER 25

PROFESSIONAL FEES AND DISBURSEMENTS

Commissioner of Canada Elections

January 2004

Chapter 25

PROFESSIONAL FEES AND DISBURSEMENTS

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1. INTRODUCTION

This chapter provides general information, direction and guidance to the Chief Investigator and Investigators for the preparation and submission of their professional fees and disbursements.

2. PROFESSIONAL FEES

The hourly rates for professional fees that may be allowed are set out in the Investigators' respective contractual agreement.

Investigators shall provide full particulars of all activities related to their professional services on the appropriate invoices[1] and submit their accounts on a bi-monthly basis or at least once a month. Goods and Services Tax (GST) number, if applicable, and Social Insurance Number (SIN) or Business Number (BN) must be included on the accounts.

The particulars required include any review, study or research of a work assignment, preparation and conduct of interviews, telephone calls, meetings, debriefings or discussions with the Chief Investigator, Senior Counsel to the Commissioner or agents[2] hired by the Commissioner for a prosecution, travel and court appearances, preparation and handling of all correspondence and documentary evidence, preparation of expense statements and investigation reports. They should also record on the correct form the time spent on each activity and briefly describe the services rendered in a chronological order.

For work related to inquiries, preliminary assessment[3] and investigations,[4] up to a maximum of eight (8) hours a day may be claimed by Investigators, unless prior approval is obtained from the Chief Investigator, Senior Counsel to the Commissioner or the Commissioner. Only exceptional circumstances will justify working longer than eight (8) hours in any given day. The Chief Investigator and the Assistant Chief Investigators cannot bill more than 7.5 hours per day.

Where the nature of the work necessitates an Investigator travelling to another locality, the travel shall be by the most economical means and the time spent in transit is billable at the contracted fee rate.

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[1] See Appendix 1, *Professional fees*, and Appendix 2, *Disbursements*, at the end of this chapter, for sample of invoices.

[2] Refer to Chapter 18 – *Consent of the Commissioner to prosecute*, for more information on the services expected of Investigators when providing assistance to an agent hired by the Commissioner for a prosecution.

[3] Refer to Chapter 3 – *Preliminary assessment of alleged infractions*, for more information on the essential requirements of this activity.

[4] Refer to Chapter 5 – *Direction and control of investigation*, for more information on the various investigative activities that may be approved by the Commissioner.

3. DISBURSEMENTS

Investigators are expected to supply at their own expense the necessary tools of their trade such as a private vehicle, home computer, printer, fax machine, telephone and other related office equipment.

Individually **itemised claims** exceeding $10.00 must be supported by a receipt, voucher or other proof of payment. However, Senior Counsel to the Commissioner may allow a disbursement unsupported by any documentation.

All claims of **long distance telephone charges** from Investigators' private residence, cellular phone[5] or commercial accommodation when on travel status must be supported by actual telephone receipts.

Claims for **photocopying charges** from commercial business must also be supported by valid receipts.

Private car mileage is reimbursed at Treasury Board's prevailing rates[6] providing the date, place and distance travelled are detailed.

Meals and incidentals while on travel status are reimbursed at prevailing Treasury Board's rates[7] when details about the date, the place, the time and distance travelled are provided. Fees claimed in excess of the daily maximum approved by Treasury Board usually will not be allowed.

Hotel accommodation expenses must be supported by a receipt at prevailing Treasury Board rates[8] (a list of hotels offering government rates is available on request from the Commissioner's Office). Where the rental of an interview room in a commercial establishment is contemplated, prior approval should be obtained from the Chief Investigator or Senior Counsel to the Commissioner.

Travel by air, train, bus, car rental, taxi (in excess of $8.00) must be supported by a receipt.

Car insurance premiums. Privately owned vehicles used on government business shall, as a minimum, have basic insurance coverage. The cost of this insurance is provided for in the kilometric rates approved by Treasury Board. Any additional premium costs necessary to increase private vehicle insurance coverage to the basic level are not reimbursable.

4. REVIEW AND TAXATION

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[5] Unless prior authorisation was obtained from the Commissioner to rent or purchase a cellular phone for use during an investigation, cellular phone expenses except long distance charges may not be claimed.

[6] See Appendix 3 at the end of this chapter. The Treasury Board's rates are revised twice a year and change will be provided when available.

[7] *Supra*, footnote 6.

[8] *Supra*, footnote 6.

All work is entrusted to an Investigator on the basis that the accounts are subject to review by the Chief Investigator and taxation by Senior Counsel to the Commissioner.

Taxation, in this context, refers to the obligation of the Senior Counsel to the Commissioner to review all requisitions for the payment of invoices received from them and to certify in writing that the fees are in accordance with the agreed rate, and that such fees and disbursements are reasonable in the circumstances, before the accounts are processed for payment by the Elections Canada's Election Financing directorate.

5. TAXATION GUIDELINES

In determining what is fair and reasonable, Senior Counsel to the Commissioner applies the following guidelines:

a) agreed rate of professional fees;

b) Treasury Board's guidelines;[9]

c) rules developed within the Office of the Commissioner based on experience of the investigative process and adopted in the interest of effectiveness and efficiency;

d) past practice with respect to discretion exercised by Senior Counsel to the Commissioner.

Any discrepancies or changes between the amounts claimed and the amounts approved by the Commissioner will be referred to the claimant.

6. FISCAL YEAR

Elections Canada's fiscal year is from April 1st to March 31st. Invoices should be submitted bi-monthly or at least on a monthly basis. To reflect the expenses in the appropriate fiscal year, accounts for work performed in a fiscal year should be submitted within 15 days of the end of the fiscal year, even if the entire work has not yet been completed.

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[9] *Supra*, footnote 6.

APPENDIX 1

BI-MONTHLY INVOICE
FACTURE BI-MENSUELLE

Professional Fees of Investigators
Honoraires professionnels des enquêteurs

Contract # de contrat :
P.O. # de P.O. :
GST/TPS:

Page ____ of/de_____

TO/À: **The Commissioner of Canada Elections** **Le Commissaire aux élections fédérales** **257, rue Slater Street** **Ottawa, Ontario K1A 0M6**	**FROM/DE:**	**Month/Mois ______________ 1 to/au 15, 200___** **Month/Mois ______________ 16 to/au 31, 200___**

Signature: ________________________________ **Date prepared / Date préparée:**_______________________

DATE Y/A M/M D/J	HOURS HEURES	FILE # # DE DOSSIER	DESCRIPTION OF WORK COMPLETED DESCRIPTION DU TRAVAIL ACCOMPLI
03-02-09	1	123456	Review and analysis of work assignment and documents supplied by the Chief
			Investigator
03-02-09	2.5	Same	Research and study of relevant provisions of the Act and CEO directives
03-02-13	.5	654321	Organizing and preparing interview of John Doe, typing questions, sorting
			documents
03-02-15	3	123456	Interview of constable A. White concerning the complaint and obtaining
			a copy of police occurrence report

TOTAL HOURS **/ hour=** **subtotal:**
TOTAL DES HEURES 7 **X** 48.00 **$/ heure=** **sous-total: $** 336.00

(If/si applicable) + G.S.T./T.P.S.: $** 23.52 **$ 359.52
TOTAL AMOUNT CLAIMED
MONTANT TOTAL RÉCLAMÉ

Approved by / Autorisé par:

____
Senior Counsel to the Commissioner
Conseiller principal du commissaire

OCEO CODING:
CODE BDGE: **46-69-50-0415-001-140**

APPENDIX 2

BI-MONTHLY INVOICE
FACTURE BI-MENSUELLE

Disbursements of Investigators
Débours des enquêteurs

Contract # de contrat :
P.O. # de P.O. :
Business #

Page __1__ of/de __1__

TO/À: **Commissioner of Canada Elections** **Commissaire aux élections fédérales** **257, rue Slater Street** **Ottawa, Ontario K1A 0M6**	**FROM/DE:**	**Month/Mois __________ 1 to/au 15, 200__** **Month/Mois __________ 16 to/au 31, 200__**

Signature:______________________________ **Date prepared / Date préparée:**________________

DATE Y/A M/M D/J	FILE # # DE DOSSIER	DESCRIPTION OF WORK COMPLETED DESCRIPTION DU TRAVAIL ACCOMPLI	AMOUNT MONTANT
03-02-03	123456	Long distance telephone calls to arrange interview (receipt 1)	5.39
03-02-03	Same	Private car mileage to town X municipal police HQ and return	
		(62 km x 43.5)	26.97
03-02-12	654321	Photocopy services (receipt 4)	3.25

Page subtotal:
Sous-total de la page: 35.61

$ 35.61
TOTAL AMOUNT CLAIMED
MONTANT TOTAL RÉCLAMÉ

Approved by / Autorisé par:

____
Senior Counsel to the Commissioner
Conseiller principal du commissaire

OCEO CODING:
CODE BDGE: **46-69-50-0424-001-140**

APPENDIX 3

Appendix B
Kilometric rates

(Publié aussi en français sous le titre *Appendice B – Taux par kilomètre)*

Effective April 1, 2003

Modules 1, 2 and 3

The rates payable in cents per kilometre for the use of privately owned vehicles driven on authorized government business travel are shown below:	**Cents/km (taxes included)**
— Alberta	41.5
— British Columbia	41.5
— Manitoba	40.5
— New Brunswick	44.0
— Newfoundland and Labrador	45.0
— Northwest Territories	48.5
— Nova Scotia	44.0
— Nunavut	48.5
— Ontario	43.5
— Prince Edward Island	42.0
— Quebec	46.0
— Saskatchewan	39.0
— Yukon	48.5

Notes:

- The kilometric rate payable when a Canadian registered vehicle is driven on government business travel in more than one province or in the USA shall be the rate applicable to the province or territory of registration of the vehicle.
- Traveller requested kilometric rates (lower rates) no longer apply to the Travel Directive.
- Traveller requested kilometric rates (lower rates) such as the Commuting Assistance Directive, Isolated Posts Directive, Relocation Directive, Reservists, etc.
  (Traveller requested kilometric rates (lower rates))

Appendix C – Allowances – Modules 1, 2 and 3 Effective October 1, 2003

- **Private non-commercial accommodation**
- **Meals**
- **Incidental expenses**
- **Weekend travel home transportation**

(Publié aussi en français sous le titre *Appendice C - Indemnités - Modules 1, 2 et 3*)

Effective Date:October 1, 2003

Seventy-five percent (75%) of the meal and incidental allowances shall be paid starting on the thirty first consecutive calendar day of travel status while at the same location when corporate residences and or apartment hotels are available to a traveller in the area surrounding the workplace, or the traveller chooses to stay in private accommodation.

		Canadian $ (taxes included)			
		Canada & USA	**Yukon & Alaska**	**N.W.T.**	**Nunavut**
1.	**Canada**				
1.1	**Private non-commercial accommodation allowance**	50.00	50.00	50.00	50.00
1.2	**Meal allowances**				
–	breakfast - 100% *breakfast - 75% (31st day onward)*	11.45 *8.60*	11.75 *8.80*	12.35 *9.25*	18.60 *13.95*
–	lunch - 100% *lunch - 75% (31st day onward)*	11.20 *8.40*	12.35 *9.25*	13.30 *10.00*	20.90 *15.70*
–	dinner - 100% *dinner - 75% (31st day onward)*	31.50 *23.65*	39.60 *29.70*	39.25 *29.45*	52.10 *39.10*
	Meal allowance total – 100% *Meal allowance total – 75% (31st day onward)*	54.15 *40.65*	63.70 *47.75*	64.90 *48.70*	91.60 *68.75*

		Canadian $ (taxes included)			
		Canada & USA	**Yukon & Alaska**	**N.W.T.**	**Nunavut**
1.3	**Incidental allowance – 100%**	17.30	17.30	17.30	17.30
	Incidental allowance – 75% (31st day onward)	*13.00*	*13.00*	*13.00*	*13.00*
	Daily Total				
	Meals and incidentals – 100%	71.45	81.00	82.20	108.90
	Meals and incidentals – 75% (31st day onward)	*53.65*	*60.75*	*61.70*	*81.75*
1.4	**Weekend travel home transportation allowances (Refer to 3.3.12 Weekend travel home, Every weekend: (b))**				
–	two-day weekend	242.90	262.00	264.40	317.80
–	three-day weekend	364.35	393.00	396.60	476.70
–	four-day weekend	485.80	524.00	528.80	635.60

2. United States of America (USA)

Allowances in the United States of America are the same as in Canada but paid in US funds.